CASE AND COMMENT

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The Nickelodeons:

A Boon and a Menace

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WHAT appears here is addressed to the public authorities of the cities, villages, and communities in which moving picture theaters exist. Do you know what happens when a match is touched to a piece of celluloid? It instantly vanishes in a puff of flame and smoke. The basis of photographic film is celluloid. This film is therefore a highly inflammable substance. It burns in fact with explosive force. In the darkened auditorium of every place of this kind, usually in the rear, and often between the audience and its only avenue of escape, is the booth or inclosure in which the cinematograph is set. Thousands of feet of this quick-burning film are whirled before the lenses of these machines in every one of these places everyday. There is a powerful light in the booth. Heat and fire are in close proximity to an explosive material. It needs only a little carelessness to bring them together. The motion picture booth or compartment is like the magazine of a battleship. It is a bad place for a cigarette smoker or an absent-minded person to work in.

There has already been one disaster. Some day there will be a flash followed by another, quick, terrible fire in a moving picture theater. Among the victims will be a large number of women and children. This, however, is not the main point. Something else will happen. The flames will spread and destroy PROPERTY surrounding the theater. This will be a great LOSS. It will moreover be SOMEBODY ELSE'S property. Against the vested property interests of the moving picture men, there is little use of weighing the danger to human life, for property rights are sacred; but against these sacred property rights, the equally sacred property rights of others will be deemed worth considering. So, it may be well to repeat: This fire which will break out in a moving picture theater, may burn up PROPERTY belonging to OTHER PERSONS. This fire may occur on the main street of YOUR city, town, or community. There are several dangers incident to motion picture theaters which are not to be underestimated, but this article is mostly about fire, and is written chiefly for the benefit of those communities which do not yet seem to be aware that this great peril exists.

The motion picture show has grown with such mighty strides that we as yet hardly realize what it is. The business is not much more than sixteen years old. It is said to have originated in the necessities of a druggist and traveling picture man, both in none too good shape financially. They rented a vacant store, set up an outfit, and tried to induce the public to pay 10 cents to see the pictures. It was too much. They cut the admission fee to five cents, named the theater "The Nickelodeon," and at the end of the first year divided $36,000 as the fruit of the venture. Since that experiment, the spread of this kind of entertainment has been extraordinary.

80 Per Cent of Theater Goers Motion Picture Patrons.

It is estimated that the cinematograph has created 15,000,000 new theater goers in the United States in the last ten years; that there are about 12,000 of these places in this country; that more than 4,000,000 of persons go to see the silent actors; that of the whole theater-going public fully 80 per cent belong to the motion picture class. It has been said that the receipts from these shows reach $1,000,000 for every working day in the year.

Popularity and Value of Picture Shows.

The moving picture theater, in spite of all of its faults, has been a great boon to the people. Any form of amusement which has taken such a powerful hold upon the public must have something in it. Such success cannot be attributed wholly to the small amount of capital invested and the trifling admission fee charged. No doubt worthless films have been put out, but many of excellent character have also been offered to the public. The range has been wide, including portrayals of history, important events of the day, the silent acting of comedies, dramas, and tragedies, the dramatization of poems and novels, legends and fairy tales, as well as pictorial representations of the life of Christ and the great stories of the Bible. Large numbers of industrial films, and others of the educational type, have also been shown. Many of the pictures have been produced at great expense, are pictorially artistic and marvels of photographic skill. The increasing number of subjects of the higher grade indicates that these theaters are no longer considered as places for children only, but ones that the grown-ups may go to with pleasure and profit.

Opposition to Moving Picture Industry.

From the very start, the nickelodeons had their enemies. The first cry of opposition came from the small merchant and the saloon keeper, who regarded these places as diverters of trade rightfully belonging to them, and from a few persons who abhorred the picture show on the general ground that all amusements are sinful and an open door to that region below which no person enters except with reluctance and regret. These early opponents of the motion picture theater, however, were soon swept aside. The first serious opposition was leveled at the character of many of the films shown, and at the evils resulting from the admission of young girls without proper guardianship.

Crimes Traceable to Pictures.

According to a report of Thomas D. Walsh, superintendent of the New York Gerry Society, sixty-two persons were tried in Manhattan and the Bronx during a period of twenty-two months, for crimes traceable to moving picture shows. This, of course, is not a large number when it is considered that motion picture theaters in the same territory can take care of 250,000 persons daily; nevertheless, it is a just basis for complaint. There is plenty of testimony along the same line. In one case, a fourteen-year-old-girl became a fire bug through the influence of motion pictures. It was said that she started two fires in her own home, and later wrote a note purporting to come from a member of the black hand society, in which she said: "I am short of money. Fifty dollars is the least that will satisfy me. If I don't get it I will burn the house down, and get your daughter too. Put the money under the mat in the first door hall to-morrow night at 8 o'clock."

Censorship of Pictures.

The remedy suggested for this evil is censorship. It is true, the newspapers are not under censorship, although they describe crime in great detail; and then the regular theaters are not subjected to censorship, although they portray many things which it would not be polite to mention in the drawing-room. But, as between the motion picture theater and the newspaper, it must be remembered that crime can be depicted much more vividly by acting than by writing; and as between the motion picture theater and the regular theater, that the former generally appeals to a younger class of patrons, more susceptible to evil in-

fluences. The manufacturers themselves know that they must not incur public disapproval of the character of the pictures produced. They have voluntarily submitted to a censorship by a national board, which, although organized originally for service in New York city, rapidly extended its control, with the co-operation of the makers of the film, until it became national.

It is said that in a single year this board rejected no less than 2,000,000 feet of the original negatives, which were destroyed, and which were produced at an actual cost of $200,000. Chicago has had for some time a special censorship board whose business it is to pass upon moving picture films in advance of exhibition, and also to inspect the actual performance as a double safeguard. St. Louis has a board of censorship on the Chicago plan. Los Angeles has a board of censors. Many other places exercise a rude sort of censorship through the licensing power. Indeed, the most that has been done about the moving picture theater has been along this line. The sentiment as to censorship, however, is not unanimous. Brand Whitlock, mayor of Toledo, for example, says: "Yet I do not feel that censorship would improve matters any. There is a danger in that, that is as bad as the danger of the pictures, possibly worse, and I believe too that there is something so antiseptic in liberty itself that, by its own process, it will work out of evil into good, and out of darkness into light; and I think this rather slow and tedious process is perhaps the only thing that will solve the problem of the moving picture show."

THE AUTHOR

Admission of Minors.

The dangers arising from the admission of unattended minors to these places are well known. Most communities have ample laws on the subject. If the ordinary course of legel procedure is too slow, and sentences of convicted managers of not sufficient deterrent force, these youthful picture show goers may be kept out by having a policeman at the door, as required under the Massachusetts act of 1911.

These evils are merely touched upon in passing. This article, as before stated, is about fire. Something has been done towards safeguarding the *morals* of the nickelodeon patrons. Little has been done to safeguard their *lives*. There is always some hope for the living. There is none for the dead. An ordinary American boy may be a good boy although he has seen dozens of daring hold-ups of the motion picture sort, and hundreds of so-called wildwest scenes with their pretended hair-brained cowboys and impossible Indian warriors. The chances are slim of his being any kind of a boy long if he is caught in a fire trap such as hundreds of these theaters are.

There is a much greater likelihood of fire in a motion picture theater than in an ordinary theater. The possibility of escape is usually much less. The underwriters know this, but it is not their business to look after the safety of the audience. The proprietors know it, but suitable buildings cost money. Those who pay 5 cents to see the show do not know it. They need protection. It is the duty of the public authorities to see that they get it.

The danger of fire in a motion picture theater is greater than in an ordinary theater, because of the inflammable nature of the films. If you want to know just how fast this film will burn, try it. The aldermen of Minneapolis did this recently, when they had the motion picture theater question up. One of the councilmen held a small strip of the film up while another touched a match to it.

The first one tried to let go, but only succeeded in dropping the burning film on his coat. No damage was done, but they did not repeat the experiment.

Former Disasters.

In the fall of 1909, the heart of the banking section of Pittsburg was shaken by a terrific explosion, the force of which shattered the windows of the ten-story Ferguson building on Third avenue, bulging the upper part of one of the side walls to a dangerous extent, and causing a panic among the occupants of the offices near by. Fire immediately broke out. The cause of this was the ignition of motion picture film stored in the office of a film exchange. The force of the explosion was upward through an air shaft, and it completely demolished a heavy reinforced glass skylight which, together with the windows of the building, was blown out. That no more serious harm resulted was due entirely to the path of the explosion.

The Cannonsburg horror is still fresh in the minds of everyone. That was also caused by the explosion of film in a moving picture machine.

Philadelphia's Fight for Safety.

In Philadelphia, a determined fight is being made to protect the public, and especially the congested sections of the city, from the menace of many cheaply constructed, flimsy moving picture theaters. Philadelphians have been roused to action by a bad fire in that city, where moving picture films stored in a building on Market street started a blaze that destroyed that structure, greatly endangering the property next door and threatening a fire which might easily have swept the center of the city. Had the theater been filled at the time, a fearful loss of life must have resulted. The audience would have found its main means of escape cut off by the flames in front of the auditorium, and the only way out that would have been left open would have been a makeshift exit in the rear, leading into a narrow alley.

It is evident from the experience of the past that picture film must be handled with the greatest of care; that in addition to the ordinary fire risk that exists in any theater is always a danger of explosion in a moving picture theater. Flimsily built motion picture places are often located in the heart of bad fire districts. If a blaze starts there, it may spread to other buildings. An unsuitably constructed motion picture theater is not only a menace to human lives; but it is a menace to surrounding property. In Philadelphia this danger to *property* is being very wisely emphasized.

The Source of Greatest Danger.

The booth or picture room is the great source of danger. The underwriters have taken care of this part of the fire risk pretty well. It was a case of looking after their own property interests. In some places, the public authorities have fully appreciated their duty not only to safeguard property rights, but what is of much more importance, the lives of those who visit these theaters. A perusal of the rules adopted by the underwriters, or the laws enacted in up-to-date states, and cities, with reference to the construction and operation of the cinematograph booth, will show how great the danger from fire is considered to be.

Twenty-six sections of the Massachusetts act of 1911 relate to the lantern booths. Twelve pages of a pamphlet on moving picture regulations deal with the construction and inspection of these inclosures, and the proper operation of the machines inside of them. There are eight diagrams or sectional plans showing how the booths must be built, the location of the cinematographs doors, rewinding bench, shelves, etc., together with the method of using certain asbestos flaps and mats required to prevent a possible spread of fire.

Some of the dangers from fire known to exist are due to the rewinding of films while running the picture machine; running the machine with the trap and side door of the lamp house open; running the machine with the film guard off; operating the machine with the magazine door open; and hanging up extra films in the hot booth, the keeping of greasy rags and paper near the machine.

The Massachusetts Act.

Under the Massachusetts act, and the laws and ordinances of other places in which the matter has been given proper attention, the films must be wound upon a metal reel in an iron box with a slot in the bottom only large enough to permit the film to pass through two sets of metal rollers which must fit tightly to the film. The joints necessary in the construction of this box must be made tight without the use of solder.

The cover which admits the placing or receiving of the reel in the box must have hinges so arranged that it will at all times close tightly, and be provided with a fastening to lock when closed. Under this box must be arranged a box of similar design and construction, containing a reel for the reception of film from the box above, with a slot in top and with two sets of rollers as directly under the top box as possible; the film to be conducted from the upper magazine or box, and then into the lower magazine or box of the same construction, placed as nearly below the focus as possible, with a metal tube or some other approved shield large enough to allow the film to pass through that tube or shield into the lower box or magazine without any friction.

The film reels must be operated by a crank firmly secured to the spindle or shaft on the head of the machine, so that there will be no possibility of its coming off.

A shutter must be placed in front of the condenser, so as to be closed instantly if necessary.

Stringent Provisions.

No electric motor is allowed with which to operate the machine.

No films, pieces of films, or loose combustible or inflammable material is allowed to remain in the booth or inclosure, unless protected by metal covering, except while actually being rewound or repaired.

All films are required to be rewound or repaired in the booth or inclosure surrounding the machine, and must each be separately kept in a closed metal box made without solder.

All boxes or magazines containing films must be kept closed while operating the machine.

The door of the booth or inclosure containing the machine must be kept closed at all times when the machine is being operated, and sufficient ventilation must be provided to carry off any excessive heat generated.

No smoking, or permitting it to be done, or matches are allowed in the booth or inclosure surrounding the machine.

Operators Must be Licensed.

No person is permitted to operate any moving picture machine who is not in the possession of a permit or license issued by an inspector of the inspection department of the Massachusetts district police. The operator must submit to an examination before he can procure a license.

These are only a small part of the specifications of fire precautions required within the moving picture booth. Even if there happens to be no special law upon this subject in any community, probably the regulations of the insurance men take care of this risk sufficiently. The underwriters enforce their rules by the threat to boost the rates or to deny insurance altogether. In many places, the matter of safeguarding the booth is left entirely to the regulations of the underwriters. If the proprietors are willing to take the risk of fire, the patrons of the theaters have absolutely no protection.

But no matter how stringent the rules of the underwriters or the laws of state or the ordinances of city may be with reference to the construction of the cinematograph booth or the operation of the machine, it isn't always possible to enforce them. Smoking in the booth may be forbidden, but not always prevented. Some lunatic will be sure to strike a match or light a cigarette within the inclosure. Any one of the many things forbidden may be done, and result in the starting of a fire.

The fire danger in a moving picture theater always being imminent, these places should at the very least be subject to the same precautionary measures that apply to first-class theaters. The value of human life cannot be measured by

the size of the admission fee. The majority of moving picture theaters are not in fireproof buildings. In fact, a large proportion of them are housed in wooden structures with improper exits. Many of them are remodeled stores with flimsy, gaudy decorations that will burn like tinder. Many are in wooden buildings that are fire traps. Some are not on the ground floor. In many the machine booth is so placed that, if a fire should break out from that quarter, the flames would cut off the only means of escape for the audience. Often spectators are allowed to stand in the aisles, or crowd the rear of the auditorium. In others, seats are not fastened to the floor and the aisles are of insufficient width.

How Pennsylvania Protects Theater Patrons.

The Pennsylvania act of 1911 requires that every building used for moving pictures shall be inclosed in brick walls, and shall be on the corner of two streets with an exit on the side, unless the rear wall abuts on a street or alley or other open place. The auditorium must be on the first floor, and every building having a seating capacity of 250 or less must have at least two 5-foot front exits and two rear exits not less than 5 feet in width. Where the seating capacity is more than 250 and less than 500 there must be three 5-foot front exits and two additional rear exits not less than 6 feet in width, leading directly to a street or alley at least 10 feet wide. The law also requires the floor to be fireproof, and no part of the building can be used for a dwelling, apartment house, hotel, or department store. Every moving picture theater seating more than 500 persons must be housed in a fireproof building, one story high, with a 5-foot open court on each side, and with two 5-foot emergency exits on either side of the auditorium.

Indianapolis Active.

In Indianapolis, every room used for moving picture exhibitions must be on the ground floor of the building and front on a public highway, and in no case can there be a means of communication from such room to any other room or building, and no other business is permitted to be conducted there. All exterior walls must be of some incombustible material. The entire floor of the auditorium, foyer, and the exit to the street must be constructed of fireproof material throughout, and if joist construction is used, the space between the joists must be filled with fireproof material.

New York Taking Action.

New York city, the center of the moving picture industry in this country, has as yet no special ordinance relating to motion pictures; but one is under consideration, and if it becomes a law, these shows will not be allowed in frame buildings within the fire limits, or in hotels, tenement houses, or lodging houses, or in factories or workshops, except where the theater is separated from the rest of the building by unpierced fireproof walls and floors, and in no case will they be allowed or operated above or below the ground floor of any building. In this proposed ordinance there are elaborate provisions for the fireproofing of the rooms in which motion pictures are exhibited. The basement or cellar under the auditorium is required to be kept free and clear, except the space used for heating apparatus, and for machinery connected with the theater, and for coal.

Rochester Conditions.

In May 1911, Rev. Caroline Bartlett Crane, of Kalamazoo, Michigan, made a brief sanitary survey of Rochester, New York. In a certain block she found a moving picture theater. "I found," said she, "proper exits provided with automatic opening devices, and the lantern was well protected. However, I found under this place a totally dark cellar with wooden beams and unplastered ceiling, and with many cords of dry wood stored under an unused wooden stairway. A wide open archway communicates with the room in which the heating furnace is situated. There was much wood stored here, also as well as old rags, paint brushes, and varnish cans. Large pieces of wood lay in contact with the pile of ashes on the cellar floor. Unprotected gas jets glared under the bare wooden beams of the ceiling." This was, no

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SUMMARY

of Local Law Covering Motion Picture Theaters as Compiled by the Author from Material Furnisbed "Case and Comment" by Authorities in Cities Named.

California

LOS ANGELES: Very complete ordinance providing for censorship and the safety of the patrons. All moving picture theaters must be on the ground floor except those in buildings known as "class A" construction; in the latter class of buildings the theater may be above the ground floor, but there are very stringent provisions as to exits. Exterior walls must be of masonry, and there is ample provision for fireproofing. The ordinance is complete as to exits, and as to the construction and safeguarding of the cinematograph booth.

SACRAMENTO: No ordinance governing moving picture theaters.

Connecticut

NEW HAVEN: No motion picture ordinance.

Florida

JACKSONVILLE: Very brief ordinance. Entirely inadequate.

Georgia

ATLANTA: Ordinance requires licensing of cinematograph operator; provides for wiring under the direction of the city electrician; for the fireproofing of the machine booth; for lighting; for exits; for stationary seats, width of aisles, etc.; is fair ordinance in this respect, but fails to provide for proper buildings. An ordinance also requires the building inspector, the superintendent of electric affairs, and the chief of the fire department to pass upon all applications for permits for the erection of new theaters.

Illinois

CHICAGO: Ordinance requires operator to pass examination for license; regulates storage of films, not exceeding 20 films are permitted to be exposed on counters and shelves during inspection; not exceeding five films can be kept or stored in operating room; films must be kept in fire-proof receptacles; immoral pictures prohibited.

QUINCY: No motion picture ordinance.

SPRINGFIELD: No special ordinance, except as to licensing.

Indiana

FORT WAYNE: No motion picture ordinance.

INDIANAPOLIS: Good ordinance; referred to elsewhere.

Iowa

DAVENPORT: No ordinance except such as a great many cities adopted immediately after the Iroquois theater fire in Chicago. Inadequate, of course, as to motion picture theaters.

DES MOINES: Ordinance referred to elsewhere.

DUBUQUE: Ordinance provides for proper equipment and safeguards in the picture booth; extra films must be kept in metal box with tight fitting covers; does not cover building itself.

Kentucky

LOUISVILLE: No motion picture ordinance.

Maine

PORTLAND: Very complete ordinance; exhibitions forbidden except in buildings of brick, stone, or concrete, and requiring the auditorium to be fireproof throughout. All walls other than brick, stone, or concrete must be metal, lathed and plastered throughout, including the ceiling and the front, rear, and two side walls; theaters having a seating capacity of less than 250, that cannot comply with the provision of the ordinance as to exits, are allowed to continue business not later than October 1st, 1912, under certain specified conditions; ample provisions for inspection, etc.

Maryland

State law requires motion picture operators to be licensed; law has just been declared constitutional.

Massachusetts

This state has a very complete law as to the inspection of cinematographs and similar apparatus, as to the licensing of operators, and the construction of the machine booth. It will be observed this does not cover the building itself.

BOSTON: Ordinance relating to licensing motion picture shows and for censoring the films; proprietors are required to have all seats firmly secured to the floor of the auditorium, and, where temporary exhibitions are given, the machine and booth must be in place by 12 o'clock noon on the day of the exhibition, in order that the building department may approve the location of machine and booth.

HOLYOKE: No motion picture ordinance.

NEW BEDFORD: No motion picture ordinance.

SPRINGFIELD: Ordinance permits mayor and aldermen to inspect; provides that exits shall be marked with the word "Exit," and for fire extinguishers. Upon the request of the licensee, one or more fireman to be detailed by the commissioner of the fire department, and one or more policemen to be detailed by the police commissioners, may be furnished, and if, in the judgment of the aldermen and committee on exhibition licenses, the same is deemed necessary, shall be furnished at the licensee's place of amusement at his expense.

SOMERVILLE: Mayor Wood writes, "This matter is entirely in the hands of the mayor."

TAUNTON: No motion picture ordinance.

WORCESTER: No motion picture ordinance.

Michigan

GRAND RAPIDS: Nothing, except an ordinance to fix a license fee for moving picture shows.

KALAMAZOO: General ordinance with reference to theaters. Not adequate for the protection of motion theater patrons.

SAGINAW: No special ordinance.

Summary of Local Law Covering Motion Pictures, Continued

Minnesota

DULUTH: Ordinance safeguarding the morals of motion picture patrons.

MINNEAPOLIS: Ordinance requires inspection of motion picture theaters once a month; the chief engineer of the fire department, when in his opinion such theaters are safe in case of fire, gives to the owner or owners a certificate signed by him, stating that said theater has been inspected, and also giving the number and location of the exits from said theater; this certificate is required to be exhibited to the audience by causing a picture of it to be projected upon the curtain immediately before each performance. Ordinance inadequate as to fire protection. A proposition to forbid the use of wooden buildings for such theaters was voted down in this city.

ST. PAUL: Ordinance meager, but makes some provision for safety of patrons. No person under twenty-one permitted to operate the machine; theater buildings must abut directly upon a street; if the auditorium room abuts upon but one street, the picture machine must be placed at that end of the room which is opposite and furthest from the street; if the building abuts upon two streets, or a street and an alley, the booth may be located at the end of the room opposite to and furthest from either street or the alley. This is an excellent provision. Many booths are so located as to cut off all means of escape, should an explosion occur. The St. Paul ordinance also covers the arrangement of exits, seats, aisles, etc.

Missouri

ST. LOUIS: No ordinance. Bill pending in municipal assembly to give the public recreation commission supervisory power over public amusements.

KANSAS CITY: No ordinance except general ordinance relating to character of building to be used, seating capacity, and conformance to certain regulations as to fire escapes, etc.

Nebraska

OMAHA: No ordinance. Ordinance relating to theaters passed long before there ever was a moving picture show in Omaha.

New Hampshire

MANCHESTER: No ordinance. Supervision of performances exercised by the chief of police.

New Jersey

CAMDEN: Mayor Charles H. Ellis warned the city council in his last message that moving picture places are springing up in all sections of the city, and that it is the duty of the city to see that proper exits are provided and other safeguards installed for the protection of life.

New York

New York state has a general statute relating to the construction and fireproofing of the booth for the cinematograph. This is quite general, and leaves the approval of the plans to the mayor or chief executive officer of the city department having supervision of the erection of buildings, to the president of a village, or the supervisor of a town, except as to certain general specifications as to dimensions, construction, and windows. This statute, although passed in 1911, is not up to date.

BUFFALO: Ordinance regulating all theatrical shows and amusements, in which is included moving picture shows.

NEW YORK CITY: No ordinance. Owing to the disadvantage of attempting to regulate moving picture shows under a section of an ordinance which was obviously not intended for them, Mayor Gaynor, about a year ago, appointed a committee to draft an ordinance regulating them. The draft of an ordinance proposed by this committee is now being considered by the board of alderman, and is referred to elsewhere in this article.

POUGHKEEPSIE: Moving picture theaters are under the control of the chief of police, and are inspected by him or by his agent two or three times a week. The licenses expire monthly. Proprietors must comply with the requirements of the police concerning not only the safety of the theater as to exits, etc., but also as to the character of the pictures. The safety of the patrons of these theaters, and the safety of the surrounding property, should not be left to this flexible arrangement.

ROCHESTER: No ordinance. The provisions in the general building ordinance with reference to the construction of theaters are inadequate for motion picture theaters. There is a sort of censorship intrusted to a discreet sargeant of police, and which, although unauthorized, is said to work very well through the desire of the theater management to remain on good terms with the police department and the city officials. It is said that this sergeant will not let the moving picture shows run unless they at least comply with the regulations of the fire underwriters, but of course, he can't do more than that.

YONKERS: No ordinance.

Ohio

CINCINNATI: Ordinance regulates the picture machine booths, and prescribes that every moving picture machine shall be in charge of a competent licensed operator appointed by an examining board composed of the commissioner of buildings, a deputy commissioner, who shall be an electrician, an owner or manager of a moving picture house, and a journeyman picture machine operator.

COLUMBUS: Ordinance determining the location of buildings which may be used for moving picture shows, regulating the exits, and providing for protection from fire in many ways.

DAYTON: No regulation except the requirement of a license fee. Censorship is exercised through the licensing power.

TOLEDO: No ordinance except as the building code provides for the inspection of moving picture theaters by the city.

Pennsylvania

PITTSBURG: Excellent ordinance as to safety of the picture machine booth, requiring operator to be licensed, etc., but entirely inadequate as to the safety of the main bulding.

SCRANTON: No motion picture ordinance.

READING: No motion picture ordinance; censorship exercised through the licensing power.

WILLIAMSPORT: No motion picture ordinance.

Rhode Island

NEWPORT: No ordinance; state law on theaters inadequate protection for moving picture shows.

Tennessee

CHATTANOOGA: No motion picture ordinance.

MEMPHIS: City attorney writes: "Memphis has an ordinance regulating these theaters, and has, moreover, a board of supervisors who pass upon the films exhibited, and decide whether or not they shall be allowed to continue."

Texas

GALVESTON: No motion picture ordinance.

HOUSTON: Ordinance forbidding smoking in or about a moving picture theater, the use of any oil stove or any other movable stove likely to be overturned in a crowd or panic; requiring the stamp of approval of the chairman of the fire committee of the city council upon the heating apparatus. There seems to be no other provision for the safety of the patrons.

Wisconsin

MILWAUKEE: Ordinance under consideration.

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doubt, one of the best of the theaters of this class in the city of Rochester.

In a number of cities ample provision has been made for the escape of the audience in case of fire, but in most cases nothing has been done.

Des Moines Ordinance.

The ordinance of Des Moines, Iowa, requires public passageways or thoroughfares on three sides of the moving picture building, with side exits upon a public street or alley. The proposed ordinance for New York city is very complete as to exits, courts, galleries, and stairs. All buildings for motion picture theaters must be provided on the main floor with at least two separate exits, one of which is to be in the front and the other in the rear, both leading to unobstructed outlets to the street, the ordinance specifying with great detail their size and manner of construction.

While a few localities have taken proper steps to safeguard motion picture theaters and their patrons from fire in general, there is almost criminal neglect in this respect. Recently the editor of CASE AND COMMENT sent letters to the public authorities of the leading cities of the United States, asking for information on the subject. Not all of them, however, replied, but the accompanying summary will show the state of the local law in the cities from which answers were received:

These answers show the need of fire protection.

A Call to Duty.

It is the duty of the public officers in every community to find out first of all if the lantern booth is provided with up-to-date safeguards. To such officials it should be said: Require the operators to submit to an examination for a license. Don't grant licenses to boys. Don't allow smoking.

See that these theaters are properly housed. In Minneapolis recently a proposition to forbid such exhibitions in wooden buildings was voted down. Don't follow the example of Minneapolis. Don't let the value of vested property interests outweigh the value of human life. If this argument does not appeal to you, remember that a fire in a moving picture theater may spread and destroy surrounding *property*. These shows should not be allowed in wooden buildings unless there are exits from all four sides, which means that in most cases they should not be permitted in wooden buildings at all.

Don't authorize these theaters above or below the ground floor.

Don't grant a license to a moving picture show unless the lantern booth is located in the end of the theater *farthest* from the exit. In most single exit theaters, the lantern, the greatest source of danger, is placed between the audience and its only means of escape. But better still, don't grant a license to a theater which has an exit on only one street. There should be proper exits leading to at least two streets or passageways. A moving picture theater ought to be located on the corner of two streets. If it is so placed that there can be exits from three sides, so much the better. If there is an exit on only one street, there ought to be fireproof passageways with proper exit doors on both sides of the theater, of ample width, leading directly to this street. In the proposed ordinance for New York city, as already pointed out, there must be at least two separate exits, one in the front and one in the rear, affording unobstructed outlets to the street. By all means, provide sufficient exits.

Follow the example of Indianapolis as to fireproofing the auditorium. Better still, require fireproof motion picture theaters. The objection will be that this costs more money than the business will stand. The answer is, then go into some other business. There is great danger to human life as the motion picture show is now conducted. There is great danger to surrounding *property* in bad *fire districts*.

It is your duty as public officers to provide adequate safeguards for such places of amusement. If you do not give the matter proper care, there is bound to be a bad fire in a motion picture theater, in which loss of life will result. And, besides,—don't forget this,—the fire may spread and burn down valuable property, if the theater is located in a dangerous fire district. It is a problem worth studying.

It is your duty to act, and to act now.

The Rights of the Holder of a Theater Ticket

BY WALTER A. SWAN
Of the Rochester (N. Y.) Bar.

THE "manager and proprietor of a theater has the right to say who shall enter his place of entertainment, and who shall not, or what class of people shall be entitled to do so, and what class shall not. This necessarily follows from the fact that his enterprise is a private one, and not public and because, while he may entertain the public at large, if he sees fit, he is under no obligation to do so." Thus wrote a justice of the supreme court of New York in a case brought by a well-known dramatic critic in New York city, charging certain theater managers with a conspiracy to exclude him from their theaters,[1] and so, almost without dissent, is it agreed that, in the absence of statutory provision, the owner or proprietor of a theater is by virtue of his ownership in as absolute control thereof as is any other citizen of his private business. The theater business is clearly a private enterprise, and, even though wholly public in its interests, demands no franchise, and is subject to no public obligations. A theater proprietor, therefore, may conduct his business in whatever manner he desires, according to the plan which best fits his judgment. He may cancel performances altogether, he may sell tickets to whomsoever he wishes, and one whom he refuses has no cause of action by reason of the refusal. Even when he sells a ticket he may refuse the holder admission, and is merely obliged to refund the price.[2]

Almost unanimously has it been held that a theater ticket is no more than a license, which is revokable at any time the proprietor so elects. It is, in the view of the New York court of appeals, "a license issued by the proprietor pursuant to the contract, as convenient evidence of the right of the holder to admission to the theater on the date named."[3] If the proprietor shall elect to revoke such license before the performance has commenced, and before the holder has taken his seat, the former may request the departure of the latter from the theater, and may use such force as is necessary to eject him if he proves obdurate. One who holds a ticket which is revoked under such circumstances has no more than an action on contract, for the reason that, with the revocation, he became a mere trespasser if he remained after being requested to leave.[4] What the holder of a ticket who is refused admission may recover for the breach of the contract is limited to the price paid for the ticket and probably such other expenses as he necessarily incurred in going to and returning from the place of amusement. He cannot recover for his disappointment or inconvenience.[5]

A theater ticket has also been called an executory contract, which the seller may repudiate before it has been executed and be liable to respond in damages only for the breach, and not for any tort in the act of exclusion.[6]

Disputes very frequently arise between theater managers and ticket holders as to the particular performance for

[1] People ex rel. Burnham v. Flynn, 114 App. Div. 578, 100 N. Y. Supp. 31.

[2] Purcell v. Daly, 19 Abb. N. C. 301.

[3] Collister v. Hayman, 183 N. Y. 250, 111 Am. St. Rep. 740, 76 N. E. 20, 5 A. & E. Ann. Cas. 344, 1 L.R.A.(N.S.) 1188.

[4] Burton v. Scherpf, 1 Allen, 133, 79 Am. Dec. 717.

[5] Luxenberg v. Keith & P. Amusement Co. 64 Misc. 69, 117 N. Y. Supp. 979.

[6] McCrea v. Marsh, 12 Gray, 211, 71 Am. Dec. 745.

which seats have been furnished, or as to their exact location, and if, by reason of an error or misunderstanding, a purchaser receives tickets which do not entitle him to seats selected, upon the date for which they were actually purchased, the proprietor is entirely within his rights in asking his patron to vacate seats so occupied, and to take others in their place. If, however, tickets for a performance other than the one for which they were requested are issued through the mistake of the management, and the holder, upon presenting them on the date for which he desired them is seated by the usher, and is thereafter wrongfully expelled, he may recover.[7]

The question of the right of a manager to refuse to sell tickets, and to revoke them after sale, has in some states been the subject of legislative enactment, by which it has been declared unlawful to refuse admission to any person over twenty-one, not under the influence of liquor, or guilty of boisterous conduct, or of lewd or immoral character, who presents a ticket of admission acquired by purchase. And so, legislation forbidding discrimination against any person on account of race or color has been made the basis of recoveries by negroes who, while holders of tickets, have been expelled from theaters or refused admission altogether. Special provision has been made in some states, making it unlawful to exclude colored persons from the equal enjoyment of all rights and privileges in places of amusement.[8] And in Illinois, an act passed in 1885, "to protect all citizens in their civil and legal rights," prohibited the proprietor of a theater from denying admission to the theater and to the several circles or grades of seats therein, because of race or color, and made an offense against the statute punishable by fine. The constitutionality of such legislation has been upheld in a number of cases,[9] on the ground that it does not take private property for public use without compensation,[10] on the ground that such statutes are within the police power of the state to regulate places of public resort.[11] And under such a statute damages have been recovered for denying admission to a negro holding a ticket, although there was a notice on the ticket expressly stating that the buyer, by accepting the ticket, agreed that the proprietor should have the right to refuse admission upon refunding the price of the ticket.[12] On the other hand, in what was known as the Civil Rights Cases, decided in the Supreme Court of the United States, an act of Congress providing for the full enjoyment of all privileges at theaters and other places of public amusement[13] for the citizens of every race and color was held unconstitutional as not being authorized by the 13th or 14th Amendment. In the absence of statutory provision, the regulation of a theater which permits colored persons to sit only in a particular part of the theater, in seats set apart for them, is not unlawful, and when seats have been sold to colored persons without knowledge on the part of the management that the holders are colored, they may be required to exchange them for seats in some other location, or surrender them altogether.[14] The rule of a theater which restricts the sale of seats to colored persons to a particular part of the house, or wholly excludes them, is a right which, of course, is based upon the fact that the business is wholly private and within the absolute control of the proprietor. The rule then, while finding its motive in class distinction, is actually based on a right which is wholly independent of any such consideration, and which permits of the exclusion of anyone regardless of race or

[7] Weber-Stair Co. v. Fisher, — Ky. —, 119 S. W. 195.

[8] Younger v. Judah, 111 Mo. 303, 33 Am. St. Rep. 527, 19 S. W. 1109, 16 L.R.A. 558.

[9] Baylies v. Curry, 128 Ill. 287, 21 N. E. 595; Ferguson v. Gies, 82 Mich. 358, 21 Am. St. Rep. 576, 46 N. W. 718, 9 L.R.A. 589; Rhone v. Loomis, 74 Minn. 200, 77 N. W. 31; Messenger v. State, 25 Neb. 674, 41 N. W. 638.

[10] Donnell v. State, 48 Miss. 661, 12 Am. Rep. 375.

[11] People v. King, 110 N. Y. 418, 6 Am. St. Rep. 389, 18 N. E. 245, 1 L.R.A. 293.

[12] Joseph v. Bidwell, 28 La. Ann. 382, 26 Am. Rep. 102.

[13] Civil Rights Cases, 109 U. S. 9, 27 L. ed. 835, 3 Sup. Ct. Rep. 18.

[14] Younger v. Judah, 111 Mo. 303, 33 Am. St. Rep. 527, 19 S. W. 1109, 16 L.R.A. 558.

color. When, however, the statute asserts equality of rights in places of public amusement, there comes the necessity for withdrawing regulations which exclude persons from amusement places because of race or color, and for decided modification of the custom to confine them to special locations in the seats. It would seem not to be a violation of the doctrine of equal rights, to require that those of a certain race or color occupy certain seats, provided the seats so assigned are equal in all respects to other seats of the same price.

The phase of this subject which is, perhaps, of most general interest to the public, or, at least, to the theater-going public, is that which has to do with that very objectionable practice known as ticket speculating. Long drawn out legislation has resulted in doing away with the worst features of the speculating business, but as long as admission to public theaters is by the ordinary ticket now in general use, the speculator will prosper, and the seeker after amusement will contribute each his small share to the spoils. What the men following this business were formerly profiting must have been immense. What they spent in the fight to retain those profits is proof that the harvest was almost fabulous.

"The sale of a theater ticket at an advance upon the original purchase price, or the business of reselling such tickets at a profit, is no more immoral or injurious to public welfare or convenience, than is the sale of an ordinary article of merchandise at a profit. It does not injure the proprietor of the theater; he must necessarily have parted with the ticket at his own price and upon his own terms before such resale can be made. It does not injure the second buyer; he must have had the same opportunity as the first buyer to purchase a similar ticket, and no greater right thereto; and having neglected that opportunity, or being unwilling to undergo the necessary inconvenience, and willing to pay a higher price rather than forego the privilege which the other by his greater diligence and effort has obtained, the transaction is just so far as he is concerned. The fact that such tickets are obtained and resold at an advance does not compel the manager of the theater to put the tickets upon the same plane as ordinary articles of merchandise. He can make them nontransferable, and place in the contract of sale any conditions necessary for the protection of himself or his patrons, and by printing such conditions on the tickets, he can prevent their resale to innocent buyers."[15] Based upon the theory that the proprietor of a theater may conduct his business as he wills to conduct it, the decisions establish the right to refuse tickets when purchased in violation of the known regulations. These regulations take the form of a statement printed upon the ticket, to the effect that the ticket will be refused if sold to the sidewalk speculators, and the question presented is as to the validity of a contract between proprietor and purchaser which contains such a condition. The condition is certainly a reasonable one, and, even were the proprietor subject to any obligation to the public by reason of holding franchises or otherwise, there is strong probability that the condition in question would still be upheld, for the enforcement of it then, as now, would be in the interests of the public itself. "There is no restraint by statute against such a condition, and it is not opposed to public policy. There is no tendency toward monopoly, for anyone can buy and sell theater tickets, provided the sales are not made on the sidewalk, where the tickets themselves provide they cannot be sold. The law does not prevent the proprietor of a theater from making reasonable regulations for the conduct of his business, and imposing such reasonable conditions upon the purchasers of tickets, as in his judgment will best serve the interest of that business."[16] And so, with the management and direction of his business entirely within his own control, it follows, without serious question, that the proprietor of a theater is in position to exact from those with

[15] Ex parte Quarg, 149 Cal. 79, 117 Am. St. Rep. 115, 84 Pac. 766, 9 A. & E. Ann. Cas. 747, 5 L.R.A.(N.S.) 183.

[16] Collister v. Hayman, 183 N. Y. 250, 111 Am. St. Rep. 740, 76 N. E. 20, 5 A. & E. Ann. Cas. 344, 1 L.R.A.(N.S.) 1188.

whom he contracts such terms as he wishes. "If the terms are satisfactory and the contract is made, the minds of the parties meet upon the condition, and the purchaser impliedly promises to perform it. There is no rule of law that prevents the enforcement of the contract in the manner provided thereby, which is to refuse admission to the holder of a ticket who bought it on the sidewalk. Where the condition is part of the contract at its origin, it continues a part thereof as long as it exists, and binds all subsequent holders with notice." [17] This phase of the ticket scalping question should not be confused with the other aspects which have been before the courts for decision, for the sidewalk sellers have sometimes won out, as for instance, in their fight to have statutes declared unconstitutional which prohibited the sale of theater tickets at a price higher than that charged by the management. It is quite obvious that such a question is solely one of property rights, and affects the question in hand only so far as is involved the matter of the terms or conditions upon which the contract is made. The effect of the terms or conditions is dependent in turn upon the answer to the question, Was notice of the conditions brought to the attention of the purchaser? The sufficiency of notices as printed upon tickets, contracts, etc., has received the attention of the courts in many cases relating to common carriers, but appears not to have been questioned as to tickets for amusement places, so that the purchaser of such a ticket is chargeable with notice of the conditions stated therein, and such conditions continue to be binding upon each transferee. And not only is the purchaser of a theater ticket notified by the statement on the ticket, but by conspicuous signs displayed at the theater warning those who buy from the speculators. The latter notice is thus in a sense a double one, for a purchaser under such circumstances is put upon his guard as to the statement of conditions upon the ticket, and in addition is plainly told that he will not be admitted.

In summary then, it appears that, as far as the proprietor of a theater is concerned, his rights are pretty clearly defined, and those rights, notwithstanding the nature of the enterprise in which he is engaged, differ little from those which the ordinary business man enjoys in the conduct of his affairs. The theater patron contracts with the proprietor for the privilege of witnessing a performance, and as evidence of the contract receives a ticket, his rights thereunder depending upon the terms of the agreement. The ticket is a license, and the license is revokable.

[17] Ibid.

I think that the moving pictures shown are pretty bad, that is to say, I think that the romanticism with which all the pictures are tinged gives a false view of life, and when I say romanticism I do not, of course, mean romance; there is very little romance in the moving pictures. I think also the conditions under which they are shown are bad, and an investigation by intelligent persons will reveal that where crowds are assembled in darkness the effect is not morally uplifting or inspiring. It is an indictment, of course, of our entire system, which, in a sense, makes moving pictures necessary for most human beings for amusement and relaxation, and the moving pictures seem to be about all that is possible for the great mass of people who are on the economical wheel, and yet I do not feel that censorship would improve matters any. There is a danger in that, that is as bad as the danger of the pictures, possibly worse, and I believe, too, that there is something so antiseptic in liberty itself that by its own process it will work out of evil into good, and out of darkness into light, and I think this rather slow and tedious process, is, perhaps, the only thing that will solve the problem of the moving-picture show.—Hon. Brand Whitlock.

Injunction to Enforce Contracts by Actors and other Artists to Perform

BY ALMOND G. SHEPARD

WHILE equity has undertaken some apparently herculean tasks in order to administer justice, that court has steadfastly and consistently refused to attempt to compel specific performance of contracts by actors or actresses to act, singers to sing, acrobats to perform, dancers to dance, or ball players to play ball. There are many obvious objections to equity assuming jurisdiction specifically to enforce contracts of this character, even where it clearly appears that the employer has no adequate remedy at law, by way of damages, for the breach by an employee of a contract of this kind. A sufficient reason for equity refusing to take jurisdiction is given by Lord Selborne,[1] who says that to enforce contracts to perform services would require a series of orders and a general superintendence which cannot conveniently be undertaken in courts of justice.

Perhaps a more potent reason is given by Kekewich, J.,[2] who reasons that it would be quite impossible to make a man work, and therefore the court never attempts to do it. Expressing the same thought Shadwell, V. C.,[3] says: "Can it be said that a man can be compelled to perform an agreement to act at a theater, by this court sending him to the Fleet for refusing to act at all? There is no method of arriving at that which is the substance of the contract between the parties, by means of any process which this court is enabled to issue." This reasoning also seemed an insurmountable objection to any attempt to compel specific performance of such a contract in Hamblin v. Dinneford.[4] On this point it is said: "The difficulty is how to compel specific performance; the court cannot oblige Mr. Ingersoll to go to the Bowery Theater and there perform particular characters. Imprisonment for a contempt would be the consequence of his refusal, and this would defeat the very performance sought to be enforced."

Restraining Similar Service for Another.

The objections against equity undertaking specifically to enforce contracts for personal services, even though extraordinary and unique in character, do not apply to equity assuming jurisdiction for the purpose of restraining the breach by an employee of an agreement not to render similar services to any other person during the term of the employment. In this class of cases it is not necessary for equity to exercise any supervisory powers, or to make different interlocutory orders relating to the enforcement of the contract. The court merely enjoins the employee from breaching this express or implied negative provision of the contract by performing similar services for anyone else, making no orders requiring the employee to render the services contracted for. It may now be regarded as settled law that equity has jurisdiction to restrain the breach of a provision, in a contract to render personal services, not to render such services for any other party during the term of the contract or for a specified period thereafter, providing a case is presented otherwise meeting the requirements of equity, which will be hereafter referred to.

[1] Wolverhampton & W. R. Co. v. London & N. W. R. Co. L. R. 16 Eq. 439, 43 L. J. Ch. N. S. 131.

[2] Whitwood Chemical Co. v. Hardman [1891] 2 Ch. 416, 60 L. J. Ch. N. S. 428, 64 L. T. N. S. 716, 39 Week. Rep. 433.

[3] Kemble v. Kean, 6 Sim. 333.

[4] 2 Edw. Ch. 529.

Distinction between Personal Service and Business Contracts.

A question arising in this class of contracts, that has provoked much discussion, is whether or not a contract of employment must contain an express negative provision in order to entitle the employer to equitable aid to prevent the employee from performing a similar service for another. An examination of the cases discloses a distinction between the enforcement of such agreements where relating to performances in theaters or other places of amusement, or contracts requiring special skill or knowledge, and contracts where the services are to be performed with reference to some business in which the employee gets into such relation with the employer's customers as will enable him, by taking employment with a rival, seriously to injure his former employer's business. In the latter class of cases, equity is quick to give relief, even though the contract contains no express negative covenant.[5] In the former class of cases, however, although some loose language may be found to the contrary, relief is seldom given unless a contract contains an express negative covenant. The court will not imply such a covenant unless such implication is necessarily required by every reasonable construction of the contract; merely that it is a contract for personal service, although of an extraordinary or unique character, is not sufficient.

As remarked by Lindley, L. J.:[6] "Every agreement to do a particular thing in one sense involves a negative. It involves the negative of doing that which is inconsistent with the thing you are to do. If I agree with a man to be at a certain place at a certain time, I impliedly agree that I will not be anywhere else at the same time, and so on *ad infinitum;* but it does not at all follow that, because a person has agreed to do a particular thing, he is therefore to be restrained from doing everything else which is inconsistent with it. The court has never gone that length, and I do not suppose that it ever will. We are dealing here with a contract of a particular class. It is a contract involving the performance of a personal service, and as a rule the court does not decree specific performance of such contracts. That is a general rule. There has been ingrafted upon that rule an exception, which is explained more or less definitely in Lumley v. Wagner, 1 De G. M. & G. 604, 21 L. J. Ch. N. S. 898, 16 Jur. 871,—that is to say, where a person has engaged not to serve any other master, or not to perform at any other place, the court can lay hold of that, and restrain him from so doing."

Necessity of Express Negative Provision.

In one of the first English cases in which relief was given,[7] the contract contained an express negative provision, and although Lord St. Leonards, in disposing of the case, used language later construed as indicating that the right to relief did not depend upon the existence of a negative clause,[8] the courts of England in subsequent decisions, however, have shown a disposition not to extend the doctrine of that case beyond its application to the facts presented. Thus Lindley, L. J., remarked[9] that he looked upon Lumley v. Wagner rather as an anomaly which it would be very dangerous to extend.

And in a later case[10] Buckley, J., in referring to the remarks by the lord justices in Whitwood Chemical Co. v. Hardman, relative to Lumley v. Wagner, said that the lord justices were dealing with a case of a contract for personal service, "which of course this court will never specifically perform, and what they point out is that, by implication, the parties there were not thinking of contracting about excluding the manager from acting for another. It is quite plain, I think, that the court of appeal

[5] See note in 31 L.R.A.(N.S.) 260.

[6] Whitwood Chemical Co. v. Hardman [1891] 2 Ch. 416.

[7] Lumley v. Wagner, 1 De G. M. & G. 604, 21 L. J. Ch. N. S. 898, 16 Jur. 871, 6 Eng. Rul. Cas. 652.

[8] Montague v. Flockton, L. R. 16 Eq. 189, 42 L. J. Ch. N. S. 677, 28 L. T. N. S. 580, 21 Week. Rep. 668.

[9] Whitwood Chemical Co. v. Hardman [1891] 2 Ch. 416.

[10] Metropolitan Electric Supply Co. v. Ginder, 84 L. T. N. S. 818.

were not prepared to extend the doctrine of Lumley v. Wagner, as to contracts of personal service, beyond the case where there exists, as there did in Lumley v. Wagner, express negative words."

That equity will not ingraft upon a contract by an actress to perform at a certain theater, a negative stipulation, and restrain a breach thereof by injunction, was early asserted in America,[11] the decision in time being prior to Lumley v. Wagner. And the court has refused to enjoin a rope dancer from performing in another theater at the instance of an employer relying upon a contract not restrictive.[12] Or to restrain a person contracting to perform at one theater from performing in any other theater, in the absence of any agreement not to perform at other theaters.[13] And has refused to restrain an actor employed for certain seasons, from acting for others between seasons, where the contract of employment contained no negative provision to that effect, even though such employment caused the employer irreparable damage.[14]

Doctrine of Montague v. Flockton.

Referring again to Montague v. Flockton, decided a few years after Lumley v. Wagner, and which construed the language of Lord St. Leonards in that case as sustaining the right of equity to restrain the breach of an implied negative agreement not to act for any other person during the term of a contract to act for plaintiff, it is of interest to note that this case has never been followed in England as to contracts for personal services by actors and others, and it was expressly disapproved in Whitwood Chemical Co. v. Hardman.[15] In this country the case was cited in Cort v. Lassard,[16] as authority for the doctrine that a contract to act at a particular theater for a specified time necessarily implies a negative against acting at any other theater during that time. And in Edwardes v. Fitzgerald,[17] Montague v. Flockton is cited in support of the doctrine that an agreement to play for a season for a particular person imports exclusive service, and hence raises an implied negative covenant.

Where Negative Provision Necessarily Implied.

Under some circumstances, however, equity will restrain an employee from performing for any person other than the one expressly contracted with, although the contract contains no express negative clause; as, when the contract shows that the parties were contracting in the sense that the employee should not serve any other master or at any other place. But the contract must be more than the ordinary contract for hire, even though relating to services of a peculiar and unique character.[18] It must be clearly indicative of the intention of the parties, that the employee was contracting to perform for no other person during the life of the contract.

It has been held that a negative clause is unnecessary if the contract clearly evidences an intention to give the employer, not the divided, but the exclusive, services of the employee.[19] It is sufficient if the employee agrees to perform exclusively for the employer;[20] or that the contract requires seven performances a week, thus rendering it impossible to perform elsewhere.[21]

Necessity of Irreparable Injury.

Ordinarily for the breach of a contract to render personal services, each party has an adequate remedy at law by an action for damages suffered from

[11] Burton v. Marshall, 4 Gill, 487, 45 Am. Dec. 171.

[12] Caldwell v. Cline, 8 Mart. N. S. 684.

[13] Butler v. Galletti, 21 How. Pr. 465.

[14] Lawrence v. Dixey, 119 App. Div. 295, 104 N. Y. Supp. 516.

[15] [1891] 2 Ch. 416, 60 L. J. Ch. N. S. 428, 64 L. T. N. S. 716, 39 Week. Rep. 433.

[16] 18 Or. 221, 17 Am. St. Rep. 726, 22 Pac. 1054, 6 L.R.A. 653.

[17] National Corp. Rep. 455.

[18] Wolverhampton & W. R. Co. v. London & N. W. R. Co. L. R. 16 Eq. 433, 43 L. J. Ch. N. S. 131.

[19] Hoyt v. Fuller, 47 N. Y. S. R. 504, 19 N. Y. Supp. 962.

[20] Fredricks v. Mayer, 13 How. Pr. 566; Canary v. Russell, 9 Misc. 558, 30 N. Y. Supp. 122.

[21] Duff v. Russell, 39 N. Y. S. R. 266, 14 N. Y. Supp. 134, affirmed in 16 N. Y. Supp. 958, which was affirmed in 133 N. Y. 678, 31 N. E. 622.

the breach; hence it is clear that in the ordinary contract for the rendition of personal services, even though the contract contains an express provision not to render similar services for another, equitable intervention cannot be invoked to restrain the breach of this negative covenant, the remedy at law being adequate.[22] This rule applies to services by actors and others of a like character, as well as to contracts to render ordinary personal services.

To secure the aid of equity to restrain the breach of a negative provision in a contract by an employee not to render similar services for another, it is therefore necessary not only to establish the contract and its threatened or actual breach, but also that the employee will thereby suffer irreparable injury, and that the damages resulting from the breach are incapable of being ascertained in an action at law.[23] The services must be of such a character that their loss to the employer and acquisition by another will cause an injury which cannot be compensated for in damages.[24]

Necessity that Service be Extraordinary and Unique.

An important question to be determined in cases wherein the plaintiff seeks to restrain an artist from performing for another is whether the services in a given case are of such a character that the breach of the contract not to render similar services for another will result in irreparable damage to the employer. In determining this question as to the adequacy of the remedy at law, a distinction is to be noted between contracts by actors and other artists for their personal services, and contracts for personal services relating to other matters. In the former, to show that the remedy at law is inadequate, it must appear that the services are extraordinary and unique in character, and that the person contracting to perform them is possessed of peculiar skill and ability in that line, for whom a substitute cannot easily be procured. As to the latter class of cases, it may be said that this test may also apply to services not relating to theatrical or amusement contracts, where the service is unique and extraordinary, requiring special skill to perform; but a breach of an express or implied covenant not to render services for another may be restrained although the services do not properly come under the denomination unique or extraordinary, as, where the contract is by one engaged as solicitor or in some other confidential character that will enable him, by breaching a negative provision not to serve a rival, to injure the business of his employer to such an extent as to cause irreparable damage, which cannot, with any degree of accuracy, be ascertained in an action at law. In this class of cases, equity will restrain a breach of the covenant on the ground of the inadequacy of the remedy at law, although, as already seen, the fact of the inadequacy is established by a different line of proof. This distinction has been very clearly drawn in some recent cases.[25] It therefore follows that, in determining the question of the adequacy of the remedy at law, as affecting the right to invoke the jurisdiction of equity to restrain the breach of a negative provision in employment contracts of a theatrical or amusement character, the same rule does not necessarily apply as that applied in cases involving ordinary contracts for personal services in connection with some business.

What Constitutes Extraordinary or Unique Service.

While the courts are in accord in holding that as to theatrical and amusement contracts for personal services the service must be extraordinary, peculiar, and unique, they are not, however, agreed as to what constitutes extraordinary, unique, or peculiar services requiring

[22] Note in 31 L.R.A.(N.S.) 249.

[23] Carter v. Ferguson, 58 Hun, 569, 12 N. Y. Supp. 580; Metropolitan Exhibition Co. v. Ward, 24 Abb. N. Cas. 393, 9 N. Y. Supp. 779; DePol v. Sohlke, 7 Robt. 280.

[24] Metropolitan Exhibition Co. v. Ward, 24 Abb. N. Cas. 393, 9 N. Y. Supp. 779.

[25] McCall Co. v. Wright, 198 N. Y. 143, 91 N. E. 516, 31 L.R.A.(N.S.) 249; Columbia College of Music & School of Dramatic Art v. Tunberg, — Wash. —, 116 Pac. 280; Eureka Laundry Co. v. Long, 146 Wis. 205, 131 N. W. 412, 35 L.R.A.(N.S.) 119.

special skill and ability. It is not sufficient that an artist, in a contract to perform, acknowledges the services contracted for are unique, and the ability of the artist such as to entitle the employer to injunction to restrain the violation of the agreement.[26]

It has been held that the artistic ability of an employee must be extraordinary and prominent.[27] And it must appear that the employer cannot easily procure another competent to take the artist's place.[28] Hence equity will not interfere if a substitute may easily be obtained.[29] Thus, where an actress had appeared under the plaintiff's management in various roles which had also been filled by numerous other artists with great satisfaction, all of whom were in the employ of plaintiff, an injunction to restrain the breach of an express stipulation not to perform for another was denied, although the employee was an artist of ability, drawing a large salary, and the artists mentioned who had acceptably filled her part were also artists of ability, and drawing much larger salaries than defendant.[30] That the employee is a celebrated equestrian is not sufficient.[31] If the service of an acrobat is not of a unique or unusual character. and may be supplied with little or no delay or expense, an injunction will be denied.[32]

It is, however, a sufficient showing that services are unique and extraordinary within this rule, to prove that the employee, an actress, has a charm peculiar to herself, and by her grace, beauty, and artistic methods has become a special attraction, rendering it difficult to procure a substitute who would be likely to produce a similar impression upon the public.[33] Or that she is employed because of her special talent as a mimic or imitator of other actresses and actors.[34] Or that she is a real star, around whom the whole production of the play centers, and she has been heavily featured in announcements and advertisements.[35] Or that she has an attractive specialty, which she alone can perform.[36] Or is distinguished and a great artistic acquisition to a theater.[37] Or is a person of superior abilities and attainments as a singer, whose addition to an opera troupe could not fail to be an attraction and a source of profit to the employer.[38] In one of the earliest cases in which the court restrained a violation of a negative provision of this kind,[39] the artist restrained was of world-wide reputation; perhaps, for this reason the question was not discussed.

It has been held to be sufficient if the artist possesses unusual attainments and personal characteristics of especial value, and it is not necessary that she should be a star, or the only star, or that the performance would be brought to a standstill by reason of her withdrawal.[40] And that if a ball player is of exceptional skill and ability and his position cannot be reasonably filled by anyone else procurable, it is sufficient.[41] Or if his services are of a unique character, and display such a special knowledge, skill, and ability that it renders them of peculiar value to the employer, and so difficult of substitution that their loss will produce irreparable injury.[42]

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[26] Hammerstein v. Mann, 137 App. Div. 580, 122 N. Y. Supp. 276; Dockstader v. Reed, 121 App. Div. 846, 106 N. Y. Supp. 795.

[27] Carter v. Ferguson, 58 Hun, 569, 12 N. Y. Supp. 580.

[28] Mapleson v. Lablache, 13 Abb. N. C. 147, note.

[29] Dockstader v. Reed, 121 App. Div. 846, 106 N. Y. Supp. 795.

[30] Hammerstein v. Mann, 137 App. Div. 580, 122 N. Y. Supp. 276.

[31] Delevan v. Macarte, 1 Ohio Dec. Reprint, 226.

[32] Cort v. Lassard, 18 Or. 221, 17 Am. St. Rep. 726, 22 Pac. 1054, 6 L.R.A. 653.

[33] Edwards v. Fitzgerald, N. Y. Law Jour. 1895.

[34] Shubert v. Angeles, 80 App. Div. 625, 80 N. Y. Supp. 146.

[35] Ziegfeld v. Norworth, 134 App. Div. 951, 118 N. Y. Supp. 1151.

[36] Hoyt v. Fuller, 47 N. Y. S. R. 504, 19 N. Y. Supp. 962.

[37] Daly v. Smith, 49 How. Pr. 150.

[38] Pratt v. Montegriffo, 57 Hun, 587, 25 Abb. N. C. 334, 10 N. Y. Supp. 903.

[39] Lumley v. Wagner, 1 De G. M. & G. 604, 21 L. J. Ch. N. S. 898.

[40] Comstock v. Lopokowa, 190 Fed. 599.

[41] Columbus Base Ball Club v. Reiley, 11 Ohio Dec. Reprint, 272.

[42] Philadelphia Base Ball Club v. Lajoie, 202 Pa. 210, 90 Am St. Rep. 627, 51 Atl. 973, 58 L.R.A. 227.

Necessity of Mutuality of Contract.

Not only must the employer show that he will suffer irreparable injury for which he has no adequate remedy at law to entitle him to invoke equitable aid, but the contract upon which he relies must be a definite, certain contract, binding upon each of the parties, and not unconscionable. Thus if the contract is indefinite, or is lacking in mutuality, it will not be enforced.[43] The parties must be reciprocally bound.[44] But the reservation of the right to terminate the employment on certain notice does not destroy the mutuality of the contract and hence preclude equitable aid to the employer.[45] Especially where the right of the employer thus to terminate the contract has been expressly waived prior to the breach complained of.[46] An actress will not be restrained from violating such a provision in a contract of employment, where she did not personally enter into the contract, but it was entered into in her behalf by her husband.[47]

Conduct of Employer.

The employer, although otherwise establishing a case for equitable intervention, may nevertheless be denied relief if he has failed to carry out his part of the contract, both in substance and in spirit, in a manner meeting the approval of equity; or if his previous dealings with defendant has been such as to raise a reasonable question whether, in the future, he will carry out his portion of the contract. Thus, equity will decline to interfere by injunction where the plaintiff has failed to do that which he has promised to do as part of the contract.[48] Or, if he has failed to pay an actress for services rendered under a previous agreement, and it does not appear that he will be able to pay for services thereafter to be rendered, unless the season is successful.[49]

Or where the employer does not allow the actor such opportunity for the display of his talents as the contract indicates were contemplated by the parties.[50] But merely hiring another actor to take the place of the defendant as a substitute during his absence, and refusing to dismiss the substitute while that play is running, is not sufficient.[51] Neither is it sufficient that an employer, under previous engagement, failed to allow an actress sufficient opportunities for displaying her talents, where she did not complain of this at the time of entering into the contract sought to be enforced.[52]

[43] Lawrence v. Dixey, 119 App. Div. 295, 104 N. Y. Supp. 516.

[44] Dockstader v. Reed, 121 App. Div. 846, 106 N. Y. Supp. 795.

[45] Philadelphia Ball Club v. Lajoie, 202 Pa. 210, 90 Am. St. Rep. 627, 51 Atl. 973, 58 L.R.A. 227.

[46] Duff v. Russell, 28 Jones & S. 80, 14 N. Y. Supp. 134.

[47] Burton v. Marshall, 4 Gill, 487, 45 Am. Dec. 171.

[48] Grimston v. Cuningham [1894] 1 Q. B. 125.

[49] Rice v. D'Arville, 162 Mass. 559, 39 N. E. 180.

[50] Fechter v. Montgomery, 33 Beav. 22.

[51] Montague v. Flockton, L. R. 16 Eq. 189, 42 L. J. Ch. N. S. 677, 28 L. T. N. S. 580, 21 Week. Rep. 668.

[52] Daly v. Smith, 49 How. Pr. 150.

The Child and the Theater

By BENJAMIN B. BLYDENBURGH

THE statutes relating to the employment of children are of two kinds. Those addressed simply to the prevention of cruelty to them, and those which aim to regulate their physical, mental, and moral health and education. Speaking generally of the restrictive laws relating to the child's employment, as a rule the earlier statutes in a jurisdiction are apt to be of the former class, and are followed later by more comprehensive regulations affecting his general upbringing. These laws are in general made applicable to children under a certain age, which generally varies from fourteen to sixteen or even eighteen years.

Provisions are frequent that a child under a named age shall not be employed in any dangerous calling, nor more than a certain number of hours per week, nor between the hours of 6 or 7 P. M. and 7 A. M., nor in places where intoxicating liquors are sold. In some cases the statute i particularly directed to the prevention of any interference with the time of the child's education, and in some cases permission for his employment is required to be obtained from the public authorities in charge of the schools.

It is the interest of the state in the child as a member of society from which is derived its general power of regulation of the mental, moral, and physical health and education of children, which is one of the most important things embraced in what is known as the police power. This is so generally accepted that there have been but few cases where the constitutionality of statutes restricting the employment of children has been questioned. And there are but few cases in the law reports where the subject of the child and the theater has been considered.

Statutory Regulations.

The statutes dealing expressly with the child in his relation to amusements and entertainments have to do with his employment or his presence as a spectator. These statutes are of much variety in their details, and it is not feasible here to do more than indicate their general character. Referring to the matter of employment, some of the statutes are of the first class above referred to, and relate more particularly to the prevention of cruelty to the child, such as those prohibiting his employment as an acrobat, or as a "rope or wire walker," or in the exhibition of any deformity; or those which prohibit his employment in any wandering occupation or in performances in the streets. Other statutes dealing with the child's employment in entertainments are more comprehensive, relating rather to the general subject of the child's physical, mental, and moral health and education, and in general are not so frequently found upon the statute books throughout the Union as those more directly addressed to the prevention of cruelty, though statutes are not infrequent which prohibit the employment of a child in any theater where intoxicating liquors are sold or given away.

New York Statute.

In some jurisdictions, the statutes relating to the employment of children in shows, entertainments, or theaters are of an elaborate nature. As a type of them may be taken the statute of New York (Penal Law, § 485), which is directed against the employment of a child actually or apparently under the age of sixteen years:

"1. As a rope or wire walker, gymnast, wrestler, contortionist, rider, or acrobat; or upon any bicycle or similar mechanical vehicle or contrivance." (Subdivision 2 relates to employments not of the exhibition class.) "3. In singing; or dancing; or playing upon a musical instrument; or in a theatrical exhibition; or in any wandering occupation; or, 4. In any illegal, indecent, or immoral exhibition or practice; or in the exhibition of any such child

when insane, idiotic, or when presenting the appearance of any deformity or unnatural physical formation or development; or, 5. In any practice or exhibition or place dangerous or injurious to the life, limb, health, or morals of the child. . . ." But this statute "does not apply to the employment of any child as a singer or musician in a church, school, or academy; or in teaching or learning the science or practice of music; or as a musician in any concert or in a theatrical exhibition, with the written consent of the mayor of the city, or the president of the board of trustees of the village, where such concert or exhibition takes place." (Such consent to be only after due notice to the society for the prevention of cruelty to children, if there be one in the county, etc.) "But no such consent shall be deemed to authorize any violation of the first, second, fourth, or fifth subdivisions of this section."

The constitutionality of this statute has been approved by the courts.[1]

Judge Gray, in delivering the opinion of the New York court of appeals sustaining this statute as a proper and legitimate exercise of the police power of the state, as promoting the health and moral well-being of the members of society, said: "By preventing the exhibition of children of tender and immature age upon the theatrical or other public stage, the legislature is exercising that right of supervision and control over the child, which, in every civilized state, inheres in the government, and which nothing in the legal relations of parent and child should be deemed to forbid. . . . In the glare of the footlights, the tinsel surroundings, and the incense of popular applause, it is not impossible that the immature mind should contract such unreal views of existence, as to unfit it for the stern realities and exactions of later life. . . . It is not the strict moralist's view, dictated by prejudice, but the view from the standpoint of a member of the body politic which ranges the judgment in support of legislative interference to restrain the parent from permitting an employment of the child, under circumstances deemed unsuited to its proper mental, moral, or physical development." [2]

This statute has been construed as not permitting the mayor of a city to give his consent to the singing and dancing of a child in a theatrical entertainment, as it is only as a musician that the act permits the child to appear in a theatrical exhibition.[3]

Statutes Regulating Employment.

Under a somewhat similar statute, where the accused was charged with employing and using a boy under sixteen years of age in the business of scaling the boilers of a steamer, as being a business dangerous to the life and limb of the child, and it was claimed that the statute made an unfair discrimination in allowing the employment of a child as a singer or musician in churches, schools, or academies, the California court held that this claim could not be sustained.[4]

Acting, singing, or dancing on the stage is "labor or work," under a statute making it criminal to employ any child under the age of fourteen years, "to labor or work in any theater or concert hall." [5]

And the employment of a child in a speaking part in a theater is employment "at work," under a general labor statute providing that no child under the age of fourteen years shall "be employed at work before 6 o'clock in the morning or after 7 o'clock in the evening," although there are other statutes in the jurisdiction relating particularly to the employment of children in theatrical exhibitions, etc.[6]

[1] People ex rel. Sanders v. Grant, 70 Hun, 233, 24 N. Y. Supp. 776; Re Ewer, 70 Hun, 239, 24 N. Y. Supp. 500, affirmed 141 N. Y. 129, 38 Am. St. Rep. 788, 36 N. E. 4, 25 L.R.A. 794; Re Stevens, 70 Hun, 243, 24 N. Y. Supp. 780. See also People v. Meade, 24 Abb. N. C. 357, 10 N. Y. Supp. 943, where an earlier form of the statute was sustained.

[2] Re Ewer, 141 N. Y. 129, 38 Am. St. Rep. 788, 36 N. E. 4, 25 L.R.A. 794.

[3] People ex rel. Sanders v. Grant, 70 Hun, 233, 24 N. Y. Supp. 776; Re Stevens, 70 Hun, 243, 24 N. Y. Supp. 780.

[4] Re Weber, 149 Cal. 392, 86 Pac. 809.

[5] State v. Rose, 125 La. 462, 51 So. 496, 26 L.R.A.(N.S.) 821.

[6] Com. v. Griffith, 204 Mass. 18, 134 Am. St. Rep. 645, 90 N. E. 394, 25 L.R.A.(N.S.) 957, where it was also held that it was no defense that the child was employed without wages in a performance where his father also acted, the boy's appearance being in his training for the theatrical profession.

As a matter of course, the statutes of a state relating to the employment of children apply to entertainments therein, although the children may be residents of another state.[7]

Admission of Children to Entertainments.

In regard to the admission of children under a certain age to shows or entertainments, some of the statutes are peremptory, such as that the child shall not be allowed at all where intoxicating liquors are sold, or in dance houses, concert saloons, or variety theaters. Others provide that such a child is not to be admitted to shows or theaters unless accompanied by a person over twenty-one years of age. Some of the statutes require the child to be accompanied by his "parent or guardian," but "guardian" as here used has been construed as meaning merely a person in charge of the child, as a brother or neighbor or friend, and not necessarily his legal guardian.[8]

It is interesting to note that it has been held in New York that a "moving picture show" is not included within the expression "a dance house, concert saloon, theater, museum, skating rink," or "place of entertainment injurious to health or morals," under a statute against the admission of an unaccompanied child under the age of sixteen years to the places above specified, where the evidence showed that the exhibition was not of a harmful nature.[9]

But the New York statute has been since enlarged to include any "kinetoscope or moving picture performance" among the entertainments to which the unaccompanied child under sixteen years of age is not to be admitted.[10]

Unconstitutional Discrimination.

Care, however, is required in the drafting of laws of this character, as is illustrated in the case of a recent statute where the inclusion of a peculiar discrimination rendered invalid the entire section of the law where it occurred. The section in question was directed against the admission of children unaccompanied by parent or guardian, or by an adult friend with the knowledge and consent of the parent or guardian, to any theater or place where theatrical, acrobatic, or vaudeville performances are given, or wherein any moving picture show is given; the section not to apply "to any performance given by or under the auspices of any public or private school or any church or Sunday school, or by any charitable organization or society; nor to entertainments held upon piers devoted to public entertainment." [11]

The court decided that the exception as to entertainments held upon piers violated the "equal protection of the laws" secured by the 14th Amendment to the United States Constitution, and that the whole section must fall.[12]

Recent Origin of Protective Legislation.

Most of the statutes dealing with the relation of the child to the theater are of comparatively recent origin. And no article on the subject, however brief, could well omit to mention in how great a degree these wise and beneficent laws are due to the devoted and masterful services of Mr. Elbridge T. Gerry, who, as the head of the New York Society for the Prevention of Cruelty to Children, waged a veritable crusade against the appearance of young children on the stage.

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[7] Ibid.

[8] People v. Samwick, 127 App. Div. 209, 111 N. Y. Supp. 11.

[9] Ibid. For a case upholding an indictment under the same statute, for admitting to a theater an unaccompanied child under sixteen years of age, see People v. Jensen, 99 App. Div. 355, 90 N. Y. Supp. 1062.

[10] N. Y. Penal Law, § 484.

[11] New Jersey Laws of 1908, chap. 185, § 2.

[12] Re Van Horne, 74 N. J. Eq. 600, 70 Atl. 986.

Religion, the Drama and the Law

BY DR. ALGERNON S. CRAPSEY

IN a recent law enacted by the legislature of the state of New York, an effort has been made to protect Divinity from the profanation and degradation of the theater. This law, which is a curiosity of legislation, forbids the "representation" of the Divine Person in any dramatic way at any time or place. Literally construed, this law would abolish public worship, close our churches, and penalize our clergy.

Recent Law Forbidding Dramatic Presentation of the Divine Person.

The framers of this law have defined the Divine Person in terms that will make the orthodox theologian, Jewish or Christian, throw up his hands in holy horror. The wording of this law would meet with the equal condemnation of both Catholic and Protestant, enacting, as it does, the Unitarian heresy into the statute law of the state of New York.

An offending actor, when arraigned for the violation of this law, will smile at the ignorance of the lawmaker who imagines that he represents the Divine or any other person by means of his art. The actor will answer his accusers by saying, "May it please the court, I do not represent; I personate;" and so he can have his laugh at the law.

It is not, however, the purpose of this paper to discuss this particular law, the construction and constitutionality of which we can safely leave to the wisdom of the judges; but it is our present intention to make this law the occasion for a brief article upon the general relation of religion to the drama, as that relation has been expressed in the laws of various countries. The word "drama," for the purposes of this article, will include the work both of the playwright and the actor.

Antagonism of Church and Theater.

The antagonism between the theater and the church, which finds its expression in the law of the state of New York forbidding the presentation by living persons of characters representing the Deity, is no new thing in religious history. This antagonism has existed in some form or other from the foundation of the Christian religion down to the present time. The reason for this hostility is not far to seek. The Church and the theater were the exponents of rival religions.

Primitive Drama Religious in Origin.

In primitive times the dramatist and the actor were ministers of religion. There were in those days no hard and fast lines between the natural and supernatural. Gods and men did not live, as now, in separate spheres, but mingled freely on the stage of human life. The fate of men often depended upon some whim of the gods, and the peace of the gods was disturbed by the passions of men. That abstract God of the English articles of religion, "without body, parts, or passions," did not exist for the primitive man. His conception of the Divine Person was naively anthropomorphic. The ancient Jew saw nothing irreverent or grotesque in a dramatic story that represented Jehovah as sitting cross-legged in the door of Abraham's tent, and discussing with the patriarch the social sins of Sodom and Gomorrah. The religious sense of the primitive Greek was not outraged by the sight of a god chasing a nymph through the forests of Arcadia. When the world was young it was the scene of a drama in which gods and men were indiscriminately cast for the parts.

The heavenly bodies, which are to us only sun, moon, and stars, moving in their orbits, without thought or feeling, were to our ancestors heroes and heroines engaged in daily conflict, and per-

forming an hourly drama in the sight of men.

The gates of day were opened by rosy-fingered Aurora, and Ahana, the breath of the morning, came, with deep sighs, to cool the brow of Zeus after a night's debauch. It was a quarrel between the gods that plunged the Hellenic peoples into the disasters of the Trojan war, and sent Æneas on his journey to found the Latin race in Italy.

Ancient religion was not a thing apart from human life. It was human life. And as the drama is nothing else than the holding of a mirror up to nature, in which human life can be seen as it is, so ancient drama was necessarily religious in its form, matter, and purpose.

Drama Divine Worship.

The drama in its earliest form was nothing more nor less than what we call divine worship. It was the recurrent celebration of some past event in the religious life of the people. The birth, the death, the rebirth of the god; the marriage of the gods; the struggle of the local gods with the hostile gods of alien people; the intercourse of the gods with men and women, especially with women,—furnished the themes for these dramas of the people.

Early Drama Realistic.

The earlier forms of dramatic art were intensely realistic. The primitive mind was too crude to be affected by suggestion or indirection. If, in the story, the god had slain his enemy, then the priest who personated the god killed the man who acted the part of the vanquished deity, in the sight of all the people. If the espousal of the god was the theme of the play, then the priest ascended the nuptial couch in the presence of the audience.

When, as in the Eleusinian mysteries, the death and rebirth of the goddess were celebrated, then the people were the actors. Greek matrons played the part of Demeter, and for nine days and nights wandered about the plains of Eleusis searching for the lost Persephone. The historian Grote thus describes the Bacchic rites of ancient Greece: "The god Dionysus, whom the legends described as clothed in feminine attire and leading a troop of women, inspired a temporary ecstasy. . . . Crowds of women clothed with fawn skins, and bearing the sanctified thyrsus, flocked to the Solitudes of Parnassus or Kithairon or Taygetus during the consecrated triennial period; passed the night there with torches, and abandoned themselves to demonstrations of frantic excitement, with dancing and clamorous invocation of the god."

It was from these primitive religious celebrations that the Greek drama was evolved. The starting and leaping of the half-mad primitive votary were tamed down to the rythmic dance of the trained actor, and the singsong cries of the excited women were reduced to the musical cadences of the educated chorister.

Drama Controlled by the State.

In the later periods of the Greek drama these religious functions were under the control of public officials, were shorn of many of their cruder elements, and adapted to the eyes and ears of politer generations. But they never lost their relation to the national religion. The great plays of Æschylus, Euripides, and Sophocles were performed at religious festivals under the direction of the priests and as an integral part of divine worship.

When theaters were built they were always located within the precincts of the temples and were considered sacred buildings.

Later Drama Religious.

The form of later Greek drama was based upon the early, unformed, unconscious drama of the religious festival. The earlier as well as the later drama of the Greeks was marked by the recitative and the chorus, the priest singing the recitative and the people answering with the chorus. In the final form of the Greek drama, the recitative was broken up into the dialogue, and assigned to different actors, but it never lost its chorus, by which it was held fast to its ancient origin.

Greek tragedy always maintained its religious character. It was the expression in dramatic form of the current theology. It brought upon the stage the heroes and the heroines of the mystic age, and did not hesitate to place upon the boards the greater gods of Olympus. "The Trojan Women" opens with a dialogue between Poseidon, the god of the sea, and Athena, the goddess of the air.

Advent of Comedy.

With the advent of comedy, the religious character of the drama became less evident. Comedy dealt with the foibles of men rather than with the nature of the gods. When comedy did bring the gods on the stage, it presented them in a manner that was not to the edification of the people. Zeus was cast as a gay Lothario in constant pursuit of some Leda or Europa; Hera took the part of a common scold; and Ares, the god of war, was held up to the laughter of the people, ensnared in the toils of Aphrodite.

Fall of Greek Religion and Drama.

Greek drama perished with the religion of which it was the expression. Philosophic skepticism made a literal belief in the reality of the ancient gods impossible for the thoughtful, and the buffoonery of the comedians made the divinities ridiculous in the eyes of the common people. The ancient religions were outgrown both intellectually and morally. The refinement of a later age could not endure the coarseness of the gods of the earlier period, either in word or action. The celebration of the religious mysteries degenerated into occasions of drunkenness and debauchery, were forsaken by the sober-minded, and were in due time displaced by new and purer forms of religious life and dramatic art.

Drama of the Roman People.

The drama of the Roman people, like that of the Greeks, was religious in its origin. The Romans were an agricultural people and their religion a rustic religion. The gods of the earlier Roman period were matter of fact and commonplace. They were the gods of the field and the marriage bed. The great fact of reproduction was the central thought of the ancient Roman cult. The Roman drama had its origin in the byplay and horseplay, in the sensual dances and songs; in the jocular and abusive improvisations of dialogue and assumption of character such as may be witnessed in any village of Southern Italy at the present day. The occasions of these festivities were religious celebrations, public or private. Weddings, which have in every age been performed by ministers of religion, were in ancient Italy the scene of sacred dramas which would shock the modesty of the most hardened frequenter of the Great White Way in New York.

The later Roman drama was of foreign origin. It was an imitation of the Greek, both in form and matter. Its favorite subject was the Trojan war, the flight of Æneas, and the foundation of the Latin Kingdom by this mythical hero. In Rome, even more than in Greece, religion and life were one, and divine worship was a function of the state. The high priest, or pontifex maximus (the title now given to the pope), was an elective officer whose chief duty it was to provide spectacles for the people. It was by his election to this office that Julius Cæsar entered upon the political career that gave him the mastery of the Roman world. Cæsar gained the great popularity which secured him the high priesthood by the magnificence of the plays and the games with which he celebrated the religious festivals when he held the lower office of ædile and had the supervision of the theater and drama. In the celebration of these festivals, Cæsar impoverished himself, and was able to redeem himself from debt only by the spoil of Spain and Gaul.

The calendar of ancient Rome, like that of modern Rome, was a list of the holy days to be celebrated throughout the year, and nearly every day was a saint's day as it is now; and every saint's day had its dramatic celebration. The Roman drama, which never developed any great originality, ended in spectacle and show, buffoonery and sensual allurement. The Roman theater assumed the vast proportions of the

Coliseum, and was debased by scenes of cruelty and licentiousness which brought to an end not only its own existence, but also that of the religion of which it was the exponent.

Attitude of the Christian Church to the Drama and Theater.

The Christian religion, which was a great moral reaction against the political corruption and social impurity of the later Republic and earlier Empire, could do nothing else than condemn, root and branch, both the drama and the theater as then existing. With prophetic rage the Christian preachers held up the ancient religion as manifested in the drama and on the stage, to the scornful hatred of mankind. The gods of the ancient faith were degraded by the Church to the rank of demons. The priests of the temples and the actors of the theater were the servants of the devil, and as such under the severest curse of God. An actor, unless he abjured his calling, had no inheritance in the Kingdom of Christ or of God. He was an outcast in time, and a lost soul in eternity.

Nor can we blame the Church for taking this stand against the drama and the theater of ancient times. The Church was then engaged in a life and death struggle with the theater, for the salvation of the human race from moral and spiritual death.

Rise of Christian Drama.

In its primitive days the Church utterly abjured all dramatic form and theatrical display. It told its story in plainest prose; its congregations gathered in bare upper rooms, in the dreariness of the cemetery, or the darkness of the catacombs; the ministers of the Church were not distinguished from the people by dress or speech. The Church was quakerlike in its simplicity, its yea was yea and its nay was nay, and whatsoever was more than this was evil.

But in spite of its protest the Church was writing and acting the greatest drama of history. The story of the life and death of Jesus was a drama in four acts. The first act embraced his baptism and his struggle with himself in the temptation; the second act presented the Galilean ministry and the growing antagonism of priest and scribe and Pharisee; the third act gave the dramatic climax of the entrance into Jerusalem and the death on Calvary; the fourth act was the happy ending in the rising from the dead and the ascension into heaven.

The church debased the religion and drama of the ancient world only that it might exalt its own religion and drama in the estimation of men. It could not long maintain its primitive simplicity. As soon as it had liberty in the open day, and could build houses to worship in, that worship at once assumed dramatic form. The church adapted to its uses the dramatic form of ancient religious worship. The celebration of the mass follows closely the earlier Greek form. In the mass we have the two essential elements of the recitative and the chorus. The priest, as representing both God and man, sings the recitative and the people sing the chorus. The representation of the great drama of redemption is given daily in the Catholic churches, and in that representation lies the life and power of the church. The Gothic churches are built for dramatic purposes. Their very structure calls for music and costume and processions through their dim-lit aisles. A Gothic cathedral is not a meetinghouse nor a place for preaching. It is in all essentials a theater in the ancient sense of that word,—a place where men not only hear but see the truths of their religion enacted before their eyes.

Miracle Plays.

Beside this great central drama which the Christian church substituted for the drama of the ancient world, this church developed a more popular drama of its own. Buffoons and strolling players amused and edified the people by dramatic performances based upon the stories of the Old and New Testaments and the lives of the saints. These crude dramatists found material ready to their hand in Noah's flood, the sacrifice of Isaac, and the like.

The priests soon saw both the value and the danger of these popular plays, and took them over into their own keeping; and monks relieved

the tedium of their lives by writing and acting these plays. These holy men were not afraid to bring God out on the stage to act before and speak to the people.

In Noah's Flood,—a Chester miracle play,—God comes out and confesses the failure of his creation in the following words:

God. I, God, that all this world hath wroughte,
Heaven and eairthe and all of naughte,
I see my people in deed and thoughte
Are sette fowle in synne.

. . .

It harmes me so hurtfullye
The malice that doth nowe multiplye
That sore it greives me hartelye
That ever I made mon.

Then God and Noah and Ham and Japheth discuss the situation, and the ark is built in consequence. In a miracle play of the Redemption, God is represented as sleeping at the time of the crucifixion, and a messenger rushes in and wakens him and tells him that the Jews are killing his Son. In the mystery of the resurrection, a priest clothed in white personates Jesus sitting at the door of the tomb. These plays were performed on holy days in front of the churches. Miracle plays and mystery plays belonged to the same order, the former dealing more particularly with the life of the saints, the latter with the life of Christ. The famous passion play at Oberammergau is not a survival of the miracle or mystery plays of the Middle Ages, but is of later origin. It is, however, religious in its character. It is enacted in obedience to a vow made by the inhabitants of the village in the hope of staying the plague in 1633.

The Morality Plays.

The morality plays competed with the miracle plays for the favor of the people of the Middle Age. The morality play was allegorical in its form. It brought the virtues and the vices on the stage. The Ben Greet players have made us all familiar with this type of play in their admirable presentation of the best of its kind, "Everyman." The clergy used these plays to instruct the unlettered people in the doctrines and discipline of the Church. These plays were written by the clergy, and were performed by those of the ministry who were in minor orders. In the Medieval Age, as in the ancient world, there was no separation between the natural and the supernatural. Man looked upon God as a factor in everyday life, and Church doctrine and discipline, such as it was, ruled in the common affairs of men. The clergy were the censors of thought and action, and as a matter of course had the oversight and control of the drama.

The Modern Drama Nonreligious.

But it has never been possible for any authority, civil or ecclesiastical, to have complete control of the life and conduct of all men. If such had ever been the case with humanity, progress would have been at an end. There are always men outside the law, criminals, vagabonds, tramps, cranks, geniuses, and the like, who cannot or will not obey priest or king; and these are the insurgents and progressives that make a way for the advance of mankind.

All through the Middle Ages there were vagrant players, outcasts from the Church and under the ban of the law, who carried the traditions of Greek and Roman drama through the times of church domination down to the modern world. These players were welcome at the castle and at the tavern, and rich and poor heard from them the story of Pyramus and Thisbe, Troilus and Cressida, and so became acquainted with a literature older than the Church and a world wider than Christianity. These players were their own playwrights and their own managers. They traveled at their own charges, in constant danger of mutilation and imprisonment, under the curse of God and the ban of society, driven on by that spirit of adventure and vagabondage which has ever been the salvation of mankind from the dry rot of conservatism.

Strolling Players.

When the revival of learning in the 15th century freed letters from the domination of the Church, these vagrant players came to their own. The miracle and morality plays of the Church could not compete with the stirring dramas of ancient and present times. The players

were still men of ill-repute. They were for the most part drunken, dissolute bands of strollers, subject to arrest, liable to have their ears cut off, setting up their booths at fairs and in the lanes and by-ways of town and country. It was out of this reek and muck that modern drama grew.

These outlaw players were taken under the protection of the great lords of the land in the 16th century, and were in this way protected from the persecution of the Church. The various bands of the players were known by the names of their various patrons. The Earl of Warwick, the Duke of Devonshire, might each have his company of actors who, under the shadow of his great name, practised their art with some degree of safety. It was with such a company of actors that Shakespeare went up from Stratford-on-Avon to London, and entered upon his career as an actor and dramatist. And with this event, the modern stage with its secular drama was established as a permanent institution of and for the modern world.

This drama was humanistic and for the first time in history irreligious. The characters represented in these dramas were not gods nor vices and virtues, as in the miracle and morality plays of the Middle Age and in the tragedies of the ancient world; they were men and women, living and acting on the plane of human life.

The divinities of the Christian myths had suffered the fate of the gods of the ancient world. They no longer interested men. The theater goer turned with avidity from the miracle play of Nickolas, bishop of Mysia, to the psychological play of Hamlet, Prince of Denmark. The Ghost in Hamlet, the Witches in Macbeth, were only stage machinery, to reveal the human characters of the play.

Theater Rival of Church.

Under these circumstances the theater became once more the rival of the Church. During the 16th and 17th centuries, the Church, having troubles of its own, was unable to check the development of the modern drama. But with the dominance of Puritan Protestantism in Northern Europe and especially in England, the antagonism of the Church to the theater became more pronounced than ever before. All plays of all kinds were condemned, theaters were closed, actors were outlawed, the immortal dramas of Shakespeare were stuffed away in cubby-holes, and the English people were condemned to psalm singing and the sermon as the only means of entertainment.

The dominance of Puritan Protestantism was short-lived, but its influence upon the drama and the stage has been lasting and disastrous. Protestantism is still the religion of a large part of the English people. And this religion condemns the stage and the drama. It forbids the theater to its ministers and its people; it places actors and actresses with drunkards and prostitutes, outside the pale of salvation. The strict Evangelical minister will neither marry not bury stage players.

The disastrous consequences of this ban of the Church on the theater is seen in the tameness and the licentiousness of the English drama since the days of Elizabeth. With the fall of Cromwell and the restoration of the Stuarts, English drama, reacting against Puritan restraint, gave itself up to an orgy of indecency. When this reaction had spent its force, English drama entered upon that era of dreary commonplace, which, enlivened here and there by the wit of a Sheridan, a Goldsmith, and a Shaw, has lasted to our day.

The drama of our day, like the life of our day, is irreligious. It has no cosmic grandeur. It is petty and individualistic. The law still holds it in check. English plays are censured, American theaters are licensed. The law of the state of New York forbidding the representation of the Divine Person on the stage is, of course, unconstitutional, but it may serve a purpose if it prevents the presentation of the Founder of Christianity in the sentimental guise of Manson in the Servant in the House, and the lodger in the Passing of the Third Floor Back.

Sir W. S. Gilbert and the Law

IN no section of the community did the tragic death of Sir W. S. Gilbert create a deeper feeling of regret than in the legal profession. He was, says a writer in the Law Journal, one of the most distinguished of the many men who practised at the bar before they wrote for the stage. Called to the bar at the Inner Temple in 1863, he joined the northern circuit, but the measure of success he gained as an advocate was not large enough to weaken his desire to become a dramatist, and at the end of four years, he abandoned all idea of a prosperous career in the courts. It is not only, however, because Sir William Gilbert was a member of the bar that the legal profession has a special interest in his incomparable series of "Savoy" operas. Not a few modern writers for the stage have been lawyers. Mr. Sydney Grundy and Mr. Anthony Hope were practising barristers before they became playwrights, and Judge Parry and Mr. Hemmerde, K. C., continue to show that the pursuit of both professions may be combined. But none of the dramatists with a legal training have turned it to better use. Sir William Gilbert was never happier than when aiming his shafts of wit at the members of the profession of which he was once a practising member.

> The law is the true embodiment
> Of everything that's excellent.
> It has no kind of fault or flaw,
> And I, my lords, embody the law,—

so sings the lord chancellor in "Iolanthe," perhaps the best of all Sir William Gilbert's legal characters. Who but a legal dramatist could have created the problem which vexes a "highly susceptible chancellor" who falls in love with a ward of court? "The feelings of a lord chancellor who is in love with a ward of court are not to be envied. What is his position? Can he give his own consent to his own marriage with his own ward? Can he marry his own ward without his own consent? And if he marries his own ward without his own consent, can he commit himself for contempt of his own court? And if he commit himself for contempt of his own court, can he appear by counsel before himself to move for arrest of his own judgment? Ah, my lords, it is indeed painful to have to sit upon a Woolsack which is stuffed with such thorns as these."

Upon the bench itself Sir William Gilbert seldom allows his satire to play, though Ko-Ko, in "The Mikado," includes in his famous list of social offenders who never will be missed, "That nisi prius nuisance who just now is rather rife, the judicial humorist." The judges of the Savoy operas are much given to indulging in reminiscences of their forensic days, and Sir William Gilbert is accustomed to make the bench the vehicle of his satire on the bar. It is, for instance, the lord chancellor, in "Iolanthe," who recalls the "new and original plan" on which, "when he went to the bar as a very young man," he determined to work:—

> Ere I go into court I will read my brief through
> (Said I to myself, said I),
> And I'll never take work I'm unable to do
> (Said I to myself, said I).
> My learned profession I'll never disgrace
> By taking a fee with a grin on my face,
> When I haven't been there to attend to the case
> (Said I to myself, said I).

Even the judge in "Trial by Jury"—one of the most delightfully whimsical of the Gilbertian plays—is mainly concerned to show how he reached the Bench. Somebody once observed that one of three

things was essential to a barrister's success,—he must choose an attorney for his father, or marry an attorney's daughter, or be a miracle. It is the second of these things of which Sir William Gilbert chose to make fun. The judge in "Trial by Jury" fell in love with "a rich attorney's elderly, ugly daughter," who might "very well pass for forty-three." In the dusk with a light behind her, the rich attorney, faithful if ungallant, promised that he should "reap the reward of his pluck:"—

The rich attorney was good as his word,
The briefs came trooping gaily,
And every day my voice was heard
At the sessions of Ancient Bailey.
All thieves who could my fees afford
Relied on my orations,
And many a burglar I've restored
To his friends and his relations.

Apart from the counsel in "Trial by Jury," who do not take a conspicuous part in the amusing proceedings, "Sir Bailey Barre, K.C., M. P.," in "Utopia," is the only member of Sir William Gilbert's branch of the profession who appears in his plays, and even here it is not the honorable and learned gentleman himself who says most of the satirical things of the bar. It is Princess Zara who makes this interesting contribution to the ethics of adovcacy:—

A complicated gentleman, allow me to present,
Of all the arts and faculties the terse embodiment,
He's a great arithmetician who can demonstrate with ease
That two and two are three, or five, or anything you please;
An eminent logician who can make it clear to you
That black is white,—when looked at from the proper point of view;
A marvelous philologist who'll undertake to show
That "Yes" is but another and a neater form of "No."

Despite the failure of solicitors to help Sir William Gilbert to realize his early ambition to become a successful advocate, they come in for a smaller share of satire in his plays than do the members of the bar. There is, it is true, "a notary in 'The Sorcerer,'" who "dry and snuffy, deaf and slow," is "everything that girls detest," but he is merely an incidental and conventional figure in a romantic scene. On the whole, the solicitor branch of the profession appears in a favorable light in the Savoy operas. Long before Lord Wolverhampton or Mr. Lloyd-George obtained a high position in the state, the author of "Pinafore" recognized the excellent training a cabinet minister may receive in a solicitor's office. Sir Joseph Porter attributes his rise to the office of first lord of the admiralty to the energy with which, while an office boy in a solicitor's office, he "polished up the handle of the big front door."

In serving writs I made such a name
That an articled clerk I soon became;
I wore clean collars and a brand new suit
For the pass examination at the Institute.
And that pass examination did so well for me,
That now I am the ruler of the Queen's Navee!

There are misguided people who believe that a solicitor's office should be shunned. Sir William Gilbert—who, by the way, was a justice of the peace and frequently sat with the Middlesex magistrates—was not among these disbelievers in litigation. In "The Mountebanks," where he explains why Ophelia ought to have brought a breach of promise action against Hamlet, he says: "Ophelia to her sex was a disgrace, whom nobody could feel compassion for. Ophelia should have gone to Ely place, to consult an eminent solicitor." In "The Grand Duke" there is a notary—a much more attractive being than the "dry and snuffy" practitioner in "The Sorcerer"—who praises a prince who "passed an act, short and compact, which may be briefly stated."

Unlike the complicated laws
A Parliamentary draftsman draws,
It may be briefly stated.

These are practically the only lines in which Sir W. S. Gilbert chose to satirize the law rather than the lawyers. The anomalies of the law were, of course, rather too serious a theme for a writer whose primary object was to be amusing. There is, however, more than enough in the Savoy plays of special and piquant interest to the legal profession to secure for their author, with his great mastery of metrical skill, an enduring place in the memory of its members.

Themis and Thespis

Something About Lawyer Dramatists

By THE EDITOR

MANY a student who has attempted to walk the ancient highways of the law has been lured aside from the narrow and arduous path into those bordering realms of romance and enchantment that appeal with irresistible force to the imaginative mind. A large part of our best fiction, our most splendid verse, our most graceful essays, has been written by men destined for the law, but who yielded to the charms of literature. Many of them might have been successful at the bar. But had they lived their lives as barristers or attorneys, their work would have been devoid of that universal interest which it now possesses, and they and their labors would have been forgotten, except in so far as their memory might be preserved on the yellow pages of ancient reports. The world has been much the gainer from the fact that these men devoted their pens to letters rather than the drawing of pleadings or the preparation of briefs.

Themis has had many versatile sons. Their mental activity has extended beyond the strict limits of the legal profession, and their genius has enriched the circle of the arts and the entire range of polite learning. This could not well be otherwise, because of the universal nature and extent of law, which "gathers up in its ashes the sparks of all the sciences in the world." It would be curious and interesting to trace the influence which men trained in the law have exerted in other lines of thought and endeavor than their own. Let us briefly notice one,—the drama.

Themis has lost numerous devotees to Thespis. Repelled by the severe and uninviting aspect of the law, or wearied by its prosaic duties, many a novice, as well as many a practitioner, has turned to the fairyland of the stage as a realm where he could indulge his most exuberant fancies. There he might hope that the utmost flights of his genius would be interpreted with sympathetic insight by actors of consummate art. There he might create anew the world, and "remold it nearer to the Heart's Desire."

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Francis Beaumont.

Such an one was Francis Beaumont, the scion of a noble family and the son of a judge. In 1600 he was admitted a member of the Inner Temple. When about nineteen years of age, he became the friend of Ben Johnson, and wrote commendatory verses to some of his dramas. At the theater, which attracted to its service most of the intellect and wit of the time, he became acquainted with John Fletcher, with whom he formed a romantic and enduring literary friendship. Both being bachelors, they lived together on the Bankside, not far from the playhouse. They shared the same clothes and cloaks between them. Sitting on the same bench, they evolved the plots and scenes of their dramas. In all, they collaborated in the production of fifty-two plays.

If we seek in their writings for a burst of passion, a beautiful sentiment, a brilliant dialogue, or a vivid picture, we shall find it. It has been objected that they lack serious characterization, and that their creations are seldom consistent. Amid tavern brawls and the clash of swords they cut life into scenes of shame and terror, yet carry before the footlights touching and poetical figures that would seem to place them on the open borders of the Infinite.

Beaumont may be said "to have changed the domain of tragedy into fairyland, turned all its terrors and its sorrows 'to favor and to prettiness,' shed the rainbow hues of sportive fancy with equal hand among tyrants and victims, the devoted and the faithless, suffering

and joy; and invoked the remorse of the moment to change them as with a harlequin's wand; unrealized the terrible, and left 'nothing serious in mortality;' but reduced the struggle of life to a glittering and heroic game, to be played splendidly out and quitted without a sigh."

David Garrick.

This eminent English actor attempted the study of law, but an irresistible instinct soon urged him to the stage. He first appeared before a London audience in the fall of 1741, in the character of Richard III., and was received with tumultuous applause. His popularity became so great and the playhouse was so crowded, that a very mortal fever was produced that was called Garrick's fever.

Garrick is said to have been equally at home in the highest flights of tragedy and the lowest depths of farce. A contemporary has asserted that "off the stage he was a mean, sneaking little fellow;" but on the stage he captivated his audiences by an art that seemed little less than magical.

Macauley tells us that Garrick "loved the society of children, partly from good nature and partly from vanity. He often exhibited all his powers of mimicry for the amusement of the little Burneys, awed them by shuddering and crouching as if he saw a ghost, scared them by raving like a maniac, and then at once became an auctioneer, a chimney sweeper, or an old woman, and made them laugh till the tears ran down their cheeks."

As a dramatic author he does not hold a high place. He wrote about forty pieces, some original, but mostly adaptations of old plays.

Garrick, although highly endowed with the artistic temperament, did not lack shrewdness or financial ability. When a nobleman wished him to be a candidate for Parliament, he replied, "No, my lord, I would rather play the part of a great man on the stage than the part of a fool in Parliament."

He accumulated a fortune of £140,000.

Henry Fielding.

"'Our immortal Fielding,' to borrow once again the famous phrase of Gibbon," writes Mr. Tighe Hopkins in The Law Times, "has so long been exclusively celebrated as 'the Father of the English novel' that many, if not the most of us, are in danger of never knowing how large was the orbit he moved in. Henry Fielding was a scholar among scholars, in an age that set great store on Greek and Latin. He was a leading wit in the fellowship of wits. He was a political dramatist with an echo in him now of Aristophanes and now of Molière. He was a publicist whose pamphlets, in a season and society that grew sick of pamphlets, had the power of impelling governments.

"Always poor and always struggling, constantly defeated, and at no time rewarded in proportion to his genius and his immense achievements, he never flinched, very rarely lost heart, and was scarcely ever at serious odds with his world. He was a man framed for enjoyment; enjoyment of the strife of politics or the stage, enjoyment of work, and of the serious problems that engaged his later years, enjoyment of good conversation with his friends, enjoyment of a venison pasty and a fair bottle of wine. He was, said his famous cousin, Lady Mary Wortley Montague, 'so formed for happiness, it is a pity he was not immortal.' In his brief span of forty-seven years (1707–1754), he was perpetually at some new thing, and always with the same keenness, steadfastness, and relish of the task.

"In opposition to Walpole he penned his first political piece,—the amazingly successful 'Pasquin,' and his acute satirical gift was instantly recognized. Mr. Godden, his biographer, says: The vigor with which Mr. Pasquin here laid about him in such matters as the legal abuses relating to imprisonment for debt may be inferred from the following passage: Queen Common Sense is speaking to the representative of bad Law, and tells him she has heard that men

> "Unable to discharge their debts,
> "At a short warning, being sued for them,
> "Have, with both power and will their debts to pay,
> "Lain all their lives in prison, for their costs.
> "Law. That may, perhaps, be some poor person's case,
> " Too mean to entertain your royal ear.
> "Q.C.S. My Lord, while I am Queen I shall not think one man too mean or poor to be redressed.

"So, too, the great genius of Fielding, when in long after years harnessed to the drudgery of a London magistrate, held no porter's brawl or beggar's quarrel too mean 'to be redressed.'

"'Pasquin' was followed by a still more smashing attack, the 'Historical Register for the year 1736,' in which we have, as Mr. Godden observes, 'the most complete display of Fielding's vigor as a fighting politician. It was too complete a display altogether for the equanimity of the goaded minister, Walpole, who figured in the piece as "Quidam, Anglice a Certain Person." Walpole retorted as effectively as a powerful minister could do, and the licensing act, which he drove through Parliament in the summer of 1737, brought Henry Fielding's career as a political dramatist to a hasty conclusion. He was censured and withdrew from the theater.'

"At the close of the year which debarred him from politics on the stage, he formally entered himself as a student at the Middle Temple. Of the ensuing two years and a half scarcely anything is known. His first biographer, Murphy, tells us that his application while a student in the Temple was 'remarkably intense.' In June, 1740, he was called to the bar, and had chambers assigned him at No. 4, Pump-Court.

"There is practically no surviving record of Fielding's activity as a barrister. He was almost without means, and was often laid by with illness," being subject to severe fits of the gout.

We may see him, says Mr. Godden, "attending the western circuit in March and again in August, riding from Winchester to Salisbury, thence to Dorchester and Exeter, and on to Launceston, Taunton, Bodmin, Wells, or Bristol, as the case might be; constant in his appearance at Westminster, and supplementing his briefs by political pamphlets written in the service of an Opposition supported by the intellect and integrity of the day."

This is not very satisfying, but nothing more is forthcoming. "It is inexplicable," as Mr. Godden remarks, "that no legal friend of the tall, well-mannered, handsome Harry Fielding, with the long nose and chin, has enriched us with a single anecdote of the talk and jest that must have made him a memorable and delightful diner at the circuit mess. It is said, and we may easily believe, that he formed many friendships at the bar. No record of them has descended to us, nor is there so much as a trace of his professional work."

"Fielding's efforts as a magistrate are utterly forgotten, yet he was one of the men who helped to make the London of the eighteenth century a possible place to live in. The law was handicapped in all directions; crime—street robbing especially—was epidemic; and Fielding, at the age of forty-three, his health already broken, flung himself with his whole energy into the double task of furthering the law and hindering the lawbreakers.

"In the terrible winter of 1753–4, Henry Fielding took a voyage for his health to Lisbon. Of his last weeks in the South we know nothing. On the 8th of October, 1754, the end, so calmly expected, came; and in the beautiful English cemetery, facing the great Basilica of the Heart of Jesus, was laid to rest all that an alien soil could claim of 'our immortal Fielding.'"

Goethe.

As a student, Goethe pointed by external profession toward the law, but his real studies were in the wide domain of literature, philosophy, and living character.

In 1770 he went to Strassburg to finish his judicial studies, but here also anything rather than the statute book occupied his time and exercised his soul. In 1771, he took his degree as Doctor of Laws. He went to Wetzlar on the Lahn, which afforded peculiar facilities to young men engaged in the study of public law. But here, as elsewhere, his studies of the human character overshadowed his professional studies. Wetzlar became to him the scene of the famous Sorrows of Werther, a glowing leaf from the life of the human soul.

The theme of his great dramatic poem, "Faust," is the cry of despair over the nothingness of life. As interpreted by Mr. Lewes, Goethe's biographer, Faust, baffled in his attempts to penetrate the mystery of life, yields himself to the Tempter, who promises him the enjoyment of life. He runs the round of

pleasure as he had run the round of learning, and fails. He is restless, because he seeks,—seeks the Absolute which can never be found. This is the doom of humanity. The mystery of existence is an awful problem, but it is a mystery, and placed beyond the boundaries of human faculty. The practical conclusion is that we should recognize it as such, and forego effort to attain that which is unattainable.

Moliere.

About 1641, Jean Baptiste Poquelin (Molière) commenced the study of law, and probably was actually admitted as an advocate. "But his name," says Sir Walter Scott, "must be added to the long list of those who have become conspicuous for success in the fine arts, having first adopted the pursuit of them in opposition to the will of their parents.

"Instead of frequenting the courts, Jean-Baptiste Poquelin was an assiduous attendant upon such companies of players as then amused Paris, and at length placed himself at the head of a society of young men who began by acting plays for amusement, and ended by performing with a view to emolument. His parents were greatly distressed by the step he had taken. He had plunged himself into a profession which the law pronounced infamous, and nothing short of rising to the very top of it could restore his estimation in society. Whatever internal confidence of success the young Poquelin might himself feel, his chance of being extricated from the degredation to which he had subjected himself must have seemed very precarious to others; and we cannot be surprised that his relations were mortified and displeased with his conduct. To conciliate their prejudices as much as possible, he dropped the appellation of Poquelin, and assumed that of Molière, that he might not tarnish the family name. But with what indifference should we now read the name of Poquelin had it never been conjoined with that of Molière, devised to supersede and conceal it."

Molière ranks as the greatest French comic dramatist,—perhaps the greatest of all comic dramatists.

"In his one-act comedy, entitled "Le Mariage Forcè,' Sganarelle," relates Sir Walter Scott, "a humorist of fifty-three or four, having a mind to marry a fashionable young woman, but feeling some instinctive doubts and scruples, consults several of his friends upon this momentous question; and the inimitable wit of Molière sustains so bald and simple a plot without permitting the reader to feel a sensation that the piece is wiredrawn or devoid of interest. . . . Receiving no satisfactory counsel, and not much pleased with the proceedings of his bride-elect, Sganarelle at last determines to give up his engagement, but is cudgeled into compliance by the brother of his intended; and so ends an entertainment which, in the hands of any other, would have been meager enough, but as treated by Molière is full of humor and gaiety.

"The concluding incident was taken from an adventure of the celebrated Comte de Grammont, renowned for his wit and gallantry, which made much noise at the time. While residing at the court of Charles II., Grammont had paid his assiduous addresses to the beautiful Miss Hamilton, sister of his future historian, Count Anthony Hamilton. But as fickle as brilliant, the Comte de Grammont, being permitted by Louis XIV. to return to Paris set off for Dover without taking leave of his mistress. Two brethren of the deserted Ariadne pursued and overtook the fugitive Theseus. 'Have you not forgotten something in London, Comte?' was the question of the Hamiltons. 'In faith, I have,' replied the Comte (more prudent than Sganarelle, and not waiting till things came to extremities), 'to marry your sister.' And he returned and redeemed his pledge accordingly, with a better grace at least than most other persons would have manifested in similar circumstances."

In the evening of the same day which saw "Le Mariage Forcè" come out, as a part of the royal *fête*, the first three acts or rough sketch of the celebrated satire entitled "Tartuffe" were presented, and won much applause. The truth, the variety, the contrast of the characters in Tartuffe, the exquisite art shown in the management of the incidents, the abundance of the sentiments and the wonderful alternations of feeling,—laughter, an-

ger, indignation, tenderness,—make this, in the opinion of most critics Molière's masterpiece.

"He performed the principal character in almost all his own pieces," states Scott, "and adhered to the stage even when many motives concurred to authorize his retirement.

"We do not reckon it any great temptation to Molière, that the Academy should have opened its arms to receive him, under condition that he would abandon the profession of actor; but the reason which he assigned for declining to purchase the honor at the rate proposed is worthy of being mentioned. 'What can induce you to hesitate?' said Boileau, charged by the academicians with the negotiation. 'A point of honor,' replied Molière. 'Now,' answered his friend, 'what honor can lie in blacking your face with mustachios and assuming the burlesque disguise of a buffoon, in order to be cudgeled on a public stage?' 'The point of honor,' answered Molière, 'consists in my not deserting more than a hundred persons whom my personal exertions are necessary to support.' The Academy afterwards did honor to themselves, and justice to Molière, by placing his bust in their hall, with this tasteful and repentant inscription,—

" 'Nothing is wanting to the glory of Molière. Molière was wanting to ours!' "

Alain René LeSage.

In 1692 LeSage came to Paris to pursue philosophic and juristic studies. He soon renounced the practice of his profession as an advocate, to devote himself to literature. Some of his dramatic pieces attained great popularity; and in 1709 he was offered 100,000 francs to suppress one of them, Turcaret, a bitter satire on the financiers of the time, but he refused the offer.

"While this play was in his portfolio," says Sir Walter Scott, "LeSage had an opportunity to show how little his temper was that of a courtier. He had been pressed to read his manuscript comedy at the Hotel de Bouillon, at the hour of noon, but was detained till 2 o'clock by the necessity of attending the decision of a lawsuit in which he was deeply interested. When he at length appeared, and endeavored to plead his excuse, the Duchess of Bouillon received his apology with coldness, haughtily remarking, he had made the company lose two hours in waiting for his arrival.—'It is easy to make up the loss, madam,' replied LeSage; 'I will not read my comedy, and you will thus regain the lost time.' He left the hotel and could never be prevailed on to return thither.

"It has been said of LeSage's works that no writings are more generally and widely known than those of his which are remembered, while none are so decidedly and utterly forgotten as those which have been consigned to neglect.

"His 'Gil Blas de Santillane' raised his fame to the highest pitch and secured it upon an immovable basis. Few have ever read this charming book, without remembering, as one of the most delightful occupations of their life, the time which they first employed in the perusal. . . . If there is anything like truth in Gray's opinion that to lie upon a couch and read new novels was no bad idea of Paradise, how would that beatitude be enhanced, could human genius afford us another 'Gil Blas!' "

Thomas Noon Talfourd.

"Judge Talfourd," says a writer in the Law Times, "was in many ways one of the most interesting figures in the literary and legal life of the first half of the last century. A lawyer and judge of distinction, he was also the author of several poetical tragedies of more than average merit, and the biographer and friend of Charles Lamb. Talfourd's versatility was perhaps his most striking characteristic. Other distinguished lawyers have dabbled in literature in early and briefless years, only to give it up when the pressure of legal business has increased. With Talfourd, however, the period of his greatest literary activity was also the period of his hardest work at the bar. Thackeray has said that if literature be a seductive mistress, law is beyond doubt a jealous wife. Talfourd apparently did not find it such. . . .

"Thomas Noon Talfourd was born at Reading on the 26th of May, 1795. In 1813, having decided to take up the law as a profession, he came to London and

entered the chambers of Joseph Chitty, a well-known special pleader, in Inner Temple lane. Talfourd at once plunged into literature,—of a sort. His first essays appeared in a magazine called the Pamphleteer, which was devoted chiefly to the consideration of serious subjects. One of these essays was on the punishment of the pillory, the abolition of which Talfourd in after years modestly ascribed to his juvenile essay. 'I wrote on the pillory,' he says, 'on such a date. Shortly afterwards the pillory was abolished,'—a clear case, thought Talfourd, of cause and effect. And it is just possible he was not altogether wrong. . . .

"The four years spent in Chitty's chambers were momentous for Talfourd in many ways. It is to be presumed he learned the now defunct art of special pleading. If his literary work at this time was not very valuable, he wrote one essay—that on Wordsworth—of more than ephemeral interest, giving that poet, as it did, a place in literature which the world at large was not disposed to give him for many years afterwards. He formed friendships which profoundly influenced his subsequent career. It is interesting to notice—remembering his success as a dramatist in later life—that his favorite recreation was the theater. 'Do you like going to the play?' asked Thackeray of a dull friend. 'Oh, yes; if it is a good play.' 'Go along!' said Thackeray, 'you don't know what I mean.' For 'the play' in its largest sense Talfourd had a sincere admiration. He was not, indeed, unacquainted with life behind the scenes. Macready, who was afterwards to become his intimate friend, he met at Chitty's chambers.

"From 1817 to 1821 Talfourd practised as a special pleader, not obtaining sufficient business, however, to relieve his mind of anxiety for the future. For this reason he decided to read for the bar, and in 1821 he was called at the Middle Temple. He at once joined the Oxford circuit. . . .

"It must have been about the year 1833—that is to say, in the year he became serjeant—that Talfourd began to write 'Ion,' which was his most successful drama. Two years afterwards, under date the 15th of March, 1835, there is this reference to 'Ion' in Macready's diary: 'Forster told me of Talfourd having completed a tragedy called "Ion." What an extraordinary, what an indefatigable man!' Extraordinary and indefatigable, indeed, he was. Within three years he had become a serjeant, had entered Parliament, and had written a lengthy tragedy of no mean poetical and dramatic merit. 'Ion' was produced on the 26th of May, 1836. The piece was a great success, Macready's acting as 'Ion' being specially admired. The scene in Covent Garden Theater on the first night was as striking as it was unusual. The house was packed with lawyers, friends of Mr. Serjeant Talfourd. Mr. Serjeant Talfourd himself was there, bowing and smiling from his box. The great author of 'The Excursion' was there with Walter Savage Landor,—Landor enthusiastic, Wordsworth cold and critical, a fact to be ascribed, says Landor, to his 'narrow intellectual sympathies and his indifference to the merits of nearly all poetry except his own.' Everyone, in short, who was anyone, was in Covent Garden Theater on the first night of 'Ion.' Altogether it was a great occasion for Mr. Serjeant Talfourd. Miss Mitford says that his head was turned with vanity at the success of 'Ion.' This is probably not true. But there is no doubt he was immensely gratified. He wrote several tragedies afterwards: 'The Athenian Captive' (acted at the Haymarket), 'Glencoe,' and 'The Castilian' (published posthumously), none of them so successful as 'Ion.'

"Meanwhile, dramatic success did not spoil Talfourd's career at the bar. In 1837, on the elevation to the bench of Mr. Justice Maule, Talfourd became leader of the Oxford circuit, and remained so until he became a judge of the common pleas, in 1849. . . .

"His judicial career was a short one, and was closed in a truly tragic manner. On the 13th of March, 1854, he died suddenly while addressing the grand jury in the Crown Court, Stafford. His last speech dealt, characteristically enough, with the crime and misery arising from the conflict between class and class. His last words were: 'What we want, gentlemen, is more sympathy—' Even as he spoke his voice faltered, his head

drooped, and in a few moments he was dead. He was the first judge who had died on the bench in the discharge of his judicial duties."

David Paul Brown.

In the year 1830, Mr. Brown, the famous Philadelphia advocate, wrote "Sertorius, or the Roman Patriot," a tragedy; and the "Prophet of St. Paul's," a melodrama, which were followed by the "Trial," another tragedy; and a farce, called "Love and Honor, or the Generous Soldier;" the first two of which were performed and published.

"Well may we admire," says an author of considerable distinction, speaking in regard to these literary labors, "that a lawyer, overwhelmed with an infinite variety of business, whose anteroom resembles that of Charles the Bold, should recreate his harassed and exhausted faculties, even amidst the passions, invective, and noise of litigation, with the beautiful dreams of poetry. . . ."

The following anecdote, related of Mr. Brown, is an illustration of the manner in which this lawyer-playwright treated a dramatic situation arising in the trial of a cause:

"Some years ago, when the duties of a juror required my regular attendance at the courts," wrote a resident of Philadelphia, "the peculiar manner and style of this gentleman's pleading struck me as being highly dramatic,—not an affected, theatrical manner, but one the result of much study of human nature, the effect of which was startling and almost overpowering, particularly to the poor devil about undergoing the ordeal of cross-examination. One case, while I was an impaneled juror, left an impression on my mind that time can never erase. The witness was a respectable looking man, with calm, settled countenance, as placid as are the deep waters when the storms have passed in their fury away. There was not in any one of his strongly marked features the least indication or index to a volume of crimes which lay hid in his breast. I had noticed this man particularly, and in a former case, had received as gospel his evidence. But Mr. Brown, the attorney in the case before the court, objected to his evidence; it should not, he observed, be received. The reasons were demanded by the court; they were promptly given; the man was a convict, unpardoned, and thus placed beyond the pale and privilege of the law by his crime, and not to be admitted at the bar otherwise than as a criminal. Much excitement ensued; the witness looked surprised; he rebutted the charge with indignation, spoke of character, law, and justice; his eyes flashed as he boldly stated to the court that he never was in prison, had never been subject to the lash of the law in any shape. Injured innocence, insulted pride, wounded honor, all seemed to rise up in vengeance against the bold accuser. Mr. Brown arose from his chair, where he had seated himself at the commencement of the witness's declaration of innocence, and walked up to him. There was determination in his look; his soul-searching eye was fixed like that of a basilisk on the witness. The effect was almost the same, for his victim's gaze was also as fixed; the one, however, was that of power,—the other that of fear. Mr. Brown spoke: 'I have objected to your evidence, sir; this objection is founded upon a knowledge of your character. Answer me, sir, were you not convicted and punished in the state of Delaware, for a heinous crime?' 'No, sir.' This was uttered with an evidently assumed boldness. 'Never! No, sir.' 'If I were to strip up the sleeves of your coat, and point to the letter R, branded on your right arm, near the shoulder, and say this was done in New Castle, Delaware, what answer would you make?' The poor wretch was crushed,—his artificial courage melted away before the fire of an intellectual eye. It is scarcely necessary to add, Brown gained his cause. From that moment I admired him; and when his tragedy of Sertorius made its appearance, I read it with additional interest, from the fact of associating a highly intellectual scene in real life with the many which so frequently occur in dramatic existence."

Actors and Actresses as Servants

BY WALTER M. GLASS

THE artistic temperament which all actors and actresses are presumed to possess, or which at least they assume to possess, does not avail them when they go into court to recover for injuries or loss which they receive while engaged in the performance of their parts, and the ordinary rules of the law of master and servant are applied to them as to ordinary mortals not afflicted with the complaint noted.

It must have been a shock to a lady engaged to perform in the chorus in a pantomine, and who described herself in the contract of employment as the *artiste* to learn that she was the "servant" of the manager, and "fellow" to the men employed to shift the scenery; but she was so held by the cold-blooded English judges who passed upon her claim for damages against the management for injuries due to the negligence of the scene shifters, which caused some heavy object to fall upon the helmet which she wore, seriously injuring her.[1]

And a member of the chorus in the opera "Carmen" is a mere fellow servant of the stage hands, so that if they are negligent in constructing out of sufficient and proper material furnished by the company a bridge, so that it falls as she is standing upon it while a company of soldiers are marching majestically past, the company is not liable for the injuries which he suffers.[2]

It is to be presumed that she was deeply impressed by the learned court's profound conclusion that when she was standing upon the bridge she was not in a "place."

So, if an actress engages in a frolic with other members of the company, during which shoes, oyster cans, and other missiles too numerous to mention are thrown about the stage in a reckless manner, she will be deemed guilty of contributory negligence if she mounts a chair, thus becoming a particularly conspicuous target for the missiles aforesaid; and the fact that while she stood upon the chair she was imitating, with more or less success, the character of a hen, did not seem particularly to impress the court, since it did not appear that she was engaged to imitate that peaceful and domestic bird.[3]

When a woman contracts to allow herself to be carried by a man representing a fireman, down a rope from a window in the fifth story of a burning building, she will be held to have assumed the risk of another employee taking hold of the rope on which she and her gallant rescuer are descending, by reason of which she is thrown up against the building to her serious injury.[4]

An employee of Buffalo Bill's Wild West Company, employed to maintain order and discipline in a car used for lodging various members of the show, is a fellow servant of another employee whose particular duty is that of watchman at the gates, so that the former can not recover for the value of his personal effects which were burned when the watchman overturned an oil stove in the car and set fire to it.[5] There was no evidence that the stove was in any way defective. The plaintiff contended that the watchman walked backwards up to and against the stove, while the defendant contended that it was overturned in a scuffle between the watchman and other employees. It would seem that the disciplinarian was confronted with a dilemma, either horn of which was conclusive

[1] Burr v. Theatre Royal, 76 L. J. K. B. N. S. 459 [1907] 1 K. B. 544, 96 L. T. N. S. 447, 23 Times L. R. 299.

[2] Hahn v. Conried Metropolitan Opera Co. 126 App. Div. 815, 111 N. Y. Supp. 161.

[3] Novelty Theater Co. v. Whitcomb, 47 Colo. 110, 106 Pac. 1012, — L.R.A.(N.S.) —.

[4] Davenport v. Oceanic Amusement Co. 132 App. Div. 368, 116 N. Y. Supp. 609.

[5] McKay v. Buffalo Bill's Wild West Co. 17 Misc. 601, 40 N. Y. Supp. 592.

against him. On his own theory it would seem that it could not be contended that the management could in any reasonable way have anticipated that one of its employees would deliberately turn his back upon a stove, and walk backwards against it and overturn it. On the theory of the management, that the accident was due to a scuffle, it would seem that the disciplinarian himself was at fault for allowing anything of the kind to take place in dangerous proximity to the stove. The plaintiff's claims were dismissed upon the ground that there was no evidence to show that the management was in any way negligent.

In an early English case, it was held that an actress was not obliged to enter into a contract with the owner of a theater, "to act, sing, and perform as a chorus singer," and if she did, she must accept things as she found them, and the master was under no obligation to light the stage or fence a hole in the floor, in a way different from that in which they were in the ordinary course of his business.[6]

[6] Seymour v. Maddox, 5 Eng. L. & Eq. Rep. 265.

Photo by Boston Photo News Co.

Coney Island

Henry Russell Miller

Author-Lawyer

BY PAUL R. MARTIN

FROM the number of lawyers who have become authors, it seems to be a generally conceded fact that literature and the law go hand in hand, and when the writer of briefs tires of his job, all he has to do is to turn his pen in another direction to become a writer of fiction. Henry Russell Miller, of Pittsburgh, is a lawyer. He is also an author, having two books to his credit which rank among the most important fictional productions of the last two years. Mr. Miller was recently interviewed regarding the trials of the man who attempts to practise law and write novels at the same time. His ideas on the subject are of unusual interest, especially to those legal practitioners who have a desire to try their hands at the writing game.

"The lawyer-literateur has his trials, no doubt of that," says Mr. Miller. "I suppose it is never easy to hold two jobs at once. I imagine, however, it is exceptionally hard to be both lawyer and author. Both the law and literature, to be practised successfully, demand concentration and careful work from their disciples. And there is no natural affinity between the drawing of contracts, abstracting of titles, and preparation of cases on the one hand, and the life of one's fictitious characters on the other.

"The chief difficulty is that one must be two different men,—lead a sort of Jekyl-and-Hyde existence, one's effort being made to accelerate, rather than to resist, the change of character. That transformation isn't easily accomplished, for wholly different mental attitudes are required in the two kinds of work. Literature is creative; the law is merely imitative. In the former one explores; in the latter one must be very careful to keep in the track beaten by others. The average lawyer finds astonishingly little opportunity for original work or thinking.

HENRY RUSSELL MILLER

"Yet there is something to be said for the double calling. While there is no blood relation between the two professions, there is, to one who looks to their ideals, after all, a similarity. The purpose of the law is—let the skeptical layman scoff, if he will—to achieve justice, and, as an essential preliminary, to discover truth. And the function of serious fiction is to see and present truth. So, perhaps, the lawyer's training is a valuable help to the man who wants to write novels of real life."

Seven years ago the city of Allegheny, Pennsylvania, was involved in political turmoil. Graft charges were rife, and a campaign for better municipal government was inaugurated, which was the most vigorous Western Pennsylvania has ever witnessed. There were many orators on hand and many speeches were made, but one man stood out above all the rest. This was Henry Russell Miller, and he became the man of the moment. He was the one everybody want-

ed to hear. He spoke every night,—oft-times two and three times a night. His speeches were spiced with wit and story, and he was greeted with enthusiasm wherever he went.

After his political experience Mr. Miller felt that he had a message to deliver, —a message that should reach all classes of people. He knew only too well what was taking place behind the scenes of the political arena. He knew of the plots and counterplots that were being laid and executed in the interests of the professional politicians, and he believed that the eyes of the public should be opened to these conditions.

Mr. Miller had little faith in the cut and dried thesis as a convincer. This method had been tried time and time again without result. What the people wanted, he thought, was entertainment. So long as they were entertained, they would also unconsciously accept a certain amount of preaching. Quinine in a capsule is far more palatable than quinine taken in the raw state.

Mr. Miller set his imagination to work, and outlined the plot of a novel. The story sketched contained plenty of human interest. The hero was strong and likable. The heroine made an immediate appeal. The characters were such as could be found in everyday life, and yet they did enough unusual things to make them fascinating. A tender love story was also conceived, for Mr. Miller believed that the women, as well as the men, should be interested. And hidden away in the story was the opportunity to draw aside the curtain behind which was concealed a big political machine.

Night after night, in the seclusion of his own room at home, Mr. Miller worked. He found composition a pleasant task, and as his story developed, and the pile of manuscript grew higher and higher, he became fascinated with his work. Finally he arrived at a point in his writing when he could say that his novel was half completed.

But fascinating as this work was, Mr. Miller was under the spell of another fascination which exerted even a greater influence over him. He became engaged to be married, and, to use his own words, "was so busy being engaged for a year, that all thoughts of literature flitted away," and his half finished novel reposed in a seldom disturbed drawer of his desk.

One day several months after his marriage, Mr. Miller took his wife to visit his parents. During the course of a conversation, the elder Mrs. Miller remarked that she had been having a lot of things removed from her son's old room, and that many of them had been consigned to the fire.

"However," she said, "I found a box in your desk, which has been put away with such care that I thought you might want it saved. It contains a manuscript, and I wanted to ask you what I should do with it."

"Burn it up," replied Mr. Miller. "It's of no earthly use except to gather dust."

By this time the curiosity of the young Mrs. Miller was aroused. She was anxious to know what this manuscript might be, and finally her husband told her of the book he had planned and half written. He still insisted that it was no good, that he had lost his inspiration for writing, and that he would never dabble in literature again.

But Mrs. Miller had made up her mind that she would read that manuscript, and she won her point. She took it home with her, and as she read, she grew as enthusiastic as her husband had been when he first penned the lines. She saw great possibilities in it, and after several weeks of persuasive argument she induced him to resume his task and finish the book.

In the meantime Henry Russell Miller's law practice had grown. The prominence he had gained during the Allegheny campaign had made him much sought after as a legal adviser. He had all the work he could attend to comfortably, and the additional burden of finishing his novel fell heavily upon his shoulders.

Mr. Miller, however, is a young man of strong will and determination. Having put his face to the plow a second time, he did not look back. All of his leisure time was spent on his book, and at last it was finished. He called it "The Man Higher Up," and the manuscript was accepted and published by the Bobbs-

Merrill Company of Indianapolis. It proved to be an instant success, and the author, spurred on by the encouragement he received, set to work on another story.

This time he needed no urging, but the work of writing was still more difficult than it had been at first. His law practice had continued its growth, and spare time was a real luxury. "But," says Mr. Miller, "there are, as Arnold Bennett has pointed out, twenty-four hours in every day, and, despite the late decree of our Supreme Court, the granddaddy of all the trusts still supplies midnight oil to all who care to use it. Besides, most of us can do a heap more work than we imagine we can."

This second book was finished, and was also accepted by the Bobbs-Merrill Company. It was published last fall under the title of "His Rise to Power," and the literary critics of the country have been unanimous in the opinion that through it, Mr. Miller may lay a real claim to authorship. Like its predecessor, it contains a note of warning against machine rule in politics, but the lesson it seeks to drive home is so cleverly concealed beneath a lot of good story that the reader never suspects it of being a preachment.

Correspondence

The Trust Problem as Viewed by Single Taxers

[A member of the St. Paul bar contributes the views of the Single Taxers regarding the best method of solving the trust problem. We present it as a supplement to the articles contained in the February Case and Comment. This communication is cast in the form of a criticism of the views of Mr. Levy Mayer, which appeared in our last number.—Ed. Note.]

Editor Case and Comment:—

There is no doubt something fundamentally wrong with the present system,—not only of corporate control, but of our whole industrial system, of which that of corporate control is but a phase.

The remedies you propose, however, are about as scientific,—well as scientific as would be an "attempt by the President to reduce the tariff scientifically." The remedy suggested, as well as the proposed "scientific" reduction of the tariff, recalls to my mind a quotation from Spencer, which seems to me apropos. Says Spencer: "If, without any previous investigation of terrestrial matter, Newton had proceeded at once to study the dynamics of the universe, and after years spent with the telescope in ascertaining the distances, sizes, times of revolution, inclination of axes, forms of orbits, perturbations, etc., of the celestial bodies, had set himself to tabulate this accumulated mass of observations, and to reduce from them the fundamental laws of planetary and stellar equilibrium, he might have cogitated to all eternity without arriving at a result. But absurd as such a method of research would have been, it would have been far less absurd than is the attempt to find out the principles of public polity, by a direct examination of that wonderfully intricate combination,—society. It need excite no surprise when legislation, based upon the theories thus elaborated, fails."

Now it is just such a job as this that a "scientific" reduction of the tariff implies. To calculate the effects of climate, wages, different standards of living, temperamental differences of peoples, distance, and the action and re-

action of one industry on another, in the effort of artifically affecting prices, is a job too big for any finite mind, and we believe that includes even a presidential or tariff board mind. The question of the tariff will never be solved by statistics; else it had been solved fifty years ago. To believe that you can benefit a country by having a majority of the people contribute to a few, in order that the few may give work to the majority, is on a par with the old superstitions that it was from the king's bounty that the subject lived. To protect a people from itself, by preventing them from buying where they can get the most for their money, and then to make an inquiry into it "scientifically," is nothing short of a joke.

Just as scientific is your plan of Federal incorporation, with a provision that the industry incorporated thereunder pay one fourth of its net profits to the government after providing for all fixed charges, interest payments, depreciation, maintenance, and a 7 per cent dividend.

The United States would get just one-fourth of nothing as its share of the net profits,—unless you regulated all the corporation charges, salaries, and prices. In other words you would have the government take the stupendous job of regulating the details of all industries. Socialists will applaud you. Others cannot agree with you.

What then is the solution?

It is simple. Abolish all tariffs, taxes, and licenses, and raise all taxes from the value of land and franchises.

What will be the result? Taking off taxes will destroy knavery and boost industry. Taking off the tariff will reduce prices and regulate them. Raising all taxes from land values will result in forcing land into use. It wont pay to hold land idle speculatively. Land will be either used by the owner or sold at any price. If used, it will create a demand for labor. All, being able to use land, because of the ease with which they can get it, will use it instead of competing with each other for jobs. This will create a demand for labor. So many more using land will produce more and cheaper commodities. Labor being in great demand will command a higher price. The result will be cheap commodities and high price of labor. Instead then of a trust having 100 men clamoring for one job, there will be 100 jobs for one man.

Men having land to work upon will be independent, and will not work unless they get at least what they can make working for themselves. Cheap commodities and high labor will soon produce a wealthy citizenry that will refuse to work unless it is given a just share in the proceeds of its industry. The result will be co-operative industry, or the trusts for the benefit of all the people, without government ownership or regulation. In short, it is the remedy pointed out with irrefutable logic by Henry George in two books, the one called "Progress and Poverty" and the other, "Protection or Free Trade."

L. B. Schwartz.

St. Paul, Minn.

The Best "Big Business" Discussion of All.

Editor CASE AND COMMENT:—

When a man has done an unusually good piece of work he is entitled to have it recognized, and to know that his crowd appreciates it.

Let one stranger subscriber say that I believe your Big Business number is by far—too far for any comparison—the best lot of thinking on the questions before us that has ever appeared in one or all other magazines. If the recent article by Senator Edmunds in the North American, and those articles could be put in book form and sent all over the nation, the benefits in educating and enlightening the people must be of immense value and influence in opening the right way which all are searching for, and none will find until many years of study, and many tentative steps with their results, make the way practicable, although they may be far from perfect. James B. Dill, when framing the large combines over twenty years ago, in an address to the law school at Albany, N. Y., carefully told the students that new laws must be framed to regulate those new colossal companies, that fact was at once recognized.

Horace Speed.

Guthrie, Okla.

Editorial Comment

All the world's a stage

Case and Comment
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¶ EDITORIAL POLICY.—It is the purpose of CASE AND COMMENT to voice the highest legal and ethical conceptions of the times; to act as a vehicle for the dissemination and interchange of the best thought of the members of the legal profession; to be both helpful and entertaining,—serving the attorney both in his work and in his hours of relaxation.

Edited by Asa W. Russell.

Copyright Infringement by Moving Pictures

THE public exhibition of moving pictures of the incidents of a copyrighted book was held in Kalem Co. v. Harper Bros. 32 Sup. Ct. Rep. 20, to constitute an infringement of the exclusive right given to the author by the copyright laws, to dramatize his work. The court further held that the makers of the films, who sell the same with the expectation that they will be so used, are contributory infringers, and that the copyright laws as so construed were within the power of Congress.

The novel in question was "Ben-Hur" written by the late General Lew Wallace of Indiana. The Kalem Company is a corporation engaged in the production of moving picture films. "By means of them," states Mr. Justice Oliver Wendell Holmes, who wrote the opinion, "anything of general interest, from a coronation to a prize fight, is presented to the public with almost the illusion of reality,—latterly even color being more or less reproduced."

The Kalem Company employed a man to read Ben-Hur and to write out such a description of certain portions that it could be followed in action; these portions giving enough of the story to be identified with ease. Then the scenes were acted out by competent performers, whose actions were recorded on negatives from which films suitable for exhibition were produced. These films were sold for use as moving pictures in the way in which such films commonly are used.

We quote from the opinion of Mr. Justice Holmes: "We are of opinion that 'Ben-Hur' was dramatized by what was done. Whether we consider the purpose of this clause of the statute, or the etymological history and present usages of language, drama may be achieved by action as well as by speech. Action can tell a story, display all the most vivid relations between men, and depict every kind of human emotion, without the aid of a word. It would be impossible to deny the title of drama to pantomine as played by masters of the art. But if a pantomine of 'Ben-Hur' would be a dramatizing of 'Ben-Hur,' it would be none the less so that it was exhibited to the audience by reflection from a glass, and not by direct vision of the figures, as sometimes has been done in order to produce ghostly or inexplicable effects. The essence of the matter in the case last supposed is not the mechanism employed, but that we see the event or story lived. The moving pictures are only less vivid than reflections from a mirror. With

the former as with the latter, our visual impression, what we see, is caused by the real pantomime of real men through the medium of natural forces, although the machinery is different and more complex."

The right of Congress to enact any copyright law at all is derived from the grant in the Constitution, Article I., § 8, of power to secure to authors for a limited time the exclusive right to their writings. It was contended by counsel in the Supreme Court that to construe the copyright act as prohibiting the reproduction of the plot of a novel in moving pictures was to extend the legislation beyond the power thus conferred upon Congress, and make it protect ideas rather than the words in which ideas are clothed. The answer is that there is no effort to create a monopoly of the ideas expressed by the author by prohibiting their reproduction in this patricular way. Dramatization in this particular way. Dramatizaduction of the ideas of an author, but their presentation in the same general order and to the same effect. If to that extent a grant of monopoly is deemed by Congress a proper way to secure the right of an author to his writings, the Supreme Court does not feel at liberty to say that Congress was wrong.

It would indeed be a strange result if the impersonation of a copyrighted work which would be unlawful if performed by actors bodily present before an audience should be permissible in their phantom counterparts, cast upon a screen through the enchantment of modern scientific art.

Forces Making for International Peace

THE world has become a very little place in these modern days. Steam and electricity have bridged the seas and made naught of the mountains. The nations have been brought face to face, and as a result old prejudices are vanishing, and the age-long dream of the brotherhood of man is nearing its fulfilment.

"All things tend toward unity of feeling among nations," writes Hon. Jackson H. Ralston. "Every traveler who crosses the Atlantic, whether he start from the East or from the West, brings about a better understanding between nations. Every railroad train crossing a frontier, every ship plying over separating waters, every cable conveying news from foreign nations, every exchange of letters or business, every book of travel, every useful or agreeable article of foreign production, every sale of our own produce or manufacture to foreign lands, is a civilizing agent, containing in itself the germ of destruction of old national prejudices and hates. In our land the traditional stage Irishman or German or Jew is disappearing. If we still laugh at the representation of a foreigner in the theater, it is not empty ribaldry, but only the amusement we may indulge in over the foibles of our best friends. Indeed, we may sympathize with the pathos of the position of the foreigner. The Parliamentarians of Turkey and the Congressmen of the United States have infinitely more in common than their forefather sheiks or attendants upon New England town meetings a hundred years ago. The bonds of sympathy between them have become infinitely stronger, and have multiplied.

"The world is training itself up for a new era." No longer do Christians or Saracens desire to contend for the possession of the Holy Sepulchre. Their future rivalries will be for the possession of the trade routes of the Orient, and in a contest growing out of a revival of those days of medieval splendor when Arabic civilization, architecture, and learning vied with that of the proudest Aryan nations.

The Arts

"These, in the past," says Professor Frank J. Mather, Jr., of Princeton University, "I must admit, have often added to the splendor of war, and supplied motives for conquest. One recalls ancient galleys bearing the statues of Syracuse or Sybaris to Rome, the ox-teams of Napoleon dragging over the passes the choicest pictures of Italy and Spain, and only yesterday, the soldiers representing our own civilized world looting the Imperial Palace at Peking. All this goes

to show that human nature must change considerably before the arts become actively the ally of peace. But I am writing for people who see in the past not the limitation of the future, but its storehouse of gradually unfolding potentialities, and I ask the reader to imagine what would be the result if into our modern industrial and commercial civilization were introduced as general a practice of the arts, and as diffused a love of the beautiful, as existed in ancient Athens or in medieval Paris.

"And this is no vague supposition, but a reasonable forecast. We are plainly in a time of expansion and improvement as regards the arts. Among art-loving nations in the past, the artist enjoyed amid wars an ambassadorial immunity. This fact E. H. Blashfield, the well-known mural painter, has recalled eloquently in a recent address before the American Academy of Arts and Letters. 'The artist,' he said, 'so far as his personal security was concerned, carried the truce of God with him. Through the fourteenth century, Italy was a battlefield, but Giotto and his painters, Giovanni Pisano and his sculptors, Arnolfo and his architects, went up and down the battlefield unharmed, and entered through the breached walls of cities to paint allegorical pictures of the blessings of peace in the townhalls.' That such immunity for the artist surprises us to-day merely shows that we love art less than the early Italians, and comprehend less humanely the peculiar character of the artist's task.

"I firmly believe that the future of the peace movement rests largely with the artisans of the world. And the artist-artisan would evidently have greater incentives to be a peace lover than his associates in the merely mechanical trades. Conscious zest in the work of every day, contentment with one's lot, appreciation of the excellence of the work of fellow-craftsmen in foreign lands, these are notable counter impulses to the traditional spell of war."

In the collection of art treasures "we have to-day an internationalism based largely on fad and commercial solicitation; there will surely come instead an internationalism based on taste,—an unconscious but effective freemasonry comprising with the artists much of the intellect and wealth of the world. And these generous admirations interlocking across political borders, and asserting a spiritual comity between chosen men of different flags and race, will make energetically against that national exclusiveness and mistrust which is the very root of war. When the future shall bring right feeling about war, and right thinking about art, their eternal antagonism will appear, and the friends of art will seem from that very fact to be the friends of peace."

International Banking and Investments

"Commerce and war," declares Isaac N. Seligman, "are obviously totally antithetic: The one, mutually friendly intercourse; the other, unfriendly, murderous clashing. The one, an ever-working instrument for building-up, for softening rancor, for spreading civilization and bringing nations together; the other, an instrument of destruction, engendering race hatred, retarding the progress of humanity.

"The modern banker has ever been the counsellor for the extension of commerce and all that that implies; actuated not by self-interest alone, but in the interest of the human race as a whole.

"This has tended to bring criticism upon bankers at times, as being a process of undue and unwarranted exaction. Yet it is an entirely logical attitude. A nation that borrows for great public works, irrigation for example, is, by the very act, fortifying its credit; the funds loaned produce additional security for their ultimate repayment.

"Loans for war, on the other hand, are for purposes of destruction of capital in various forms; the demolition of useful public works, buildings, and particularly the destruction of life, an essential part of the world's capital. Destruction of capital, in the nature of things, never appeals to a banker.

"More and more often is he called into the councils of the rulers of national destinies. More and more frequently is his *dictum* given weight in determining if war shall come or not; whether war shall continue when once inaugurated."

So irresistible are the unseen forces bringing to the surface more enlightened views as more difficult conditions arise, that it suggests the question,—whether the all-wise Creator is not using economic law and necessity as one of the greatest fundamental forces in uplifting the moral character and mental vision of humanity.

Dickens, the Publicist

IN Dickens's day the term "problem novel" or "problem play," says the Boston Transcript, "was virtually unknown. Possibly if he had been told that he was a "sociological novelist," he would have asked for a definition of that phrase. Yet he was all that these expressions now imply, for as a humorist and as a story-teller he did not exhaust his activities. Eminently he was a publicist who used his novels as mediums for a propaganda whose general purpose was the reform of the institutions of his country. The humorist and the publicist in Dickens walked side by side, and the latter has been so obscured by the former that very few, if any, of the thousands of tributes and estimates of the great novelist which have appeared in this his centennial year have given any attention to the great influence Dickens exerted on the social-political administrative systems of his era.

"Nevertheless, beginning with the 'Pickwick Papers' and running almost continuously through his published works, we find an effort to better the condition of his fellow men, especially the condition of unfortunates. The 'Pickwick Papers' exposed the cruel absurdity of imprisonment for debt, though the full possibilities of a debtor's prison were not displayed until 'Little Dorrit' was written. 'Oliver Twist' showed up the inhumanity and short-sightedness of the poor law administration. 'Bleak House' gave point and impetus to the agitation then under way for the reform of the court of chancery. The story of Jarndyce and Jarndyce was not very unlike that of other celebrated cases which ended only when the estate involved was exhausted. In every one of his books there is a side line of the activity of the publicist.

"Dickens lived to see a great deal of the good work he essayed brought to accomplishment, but, nevertheless, he believed there was much left to be done by those who should come after him. Usually he is characterized as an optimist, but more properly he was a genial reformer. Profound distrust of certain features of the English system was entertained by him to the last. Not a pessimist by any means, he was yet inclined to believe that a great constitutional change was necessary to the final development of government efficiency in Great Britain. The 'Circumlocution Office,' which he described so graphically as to enrich our language with a new expression, was to him a minor evil compared with the general unwieldiness of the parliamentary system. Not long before his death a critic said to him that he (Dickens) seemed to disbelieve entirely in the parliamentary system of government. Dickens admitted that disbelief, but said that for the life of him he would not know what to substitute for the parliamentary system. Dickens's discontent, or, as the phrase would now be, 'unrest,' was that of a large and generous spirit. It had no spitefulness in it, and he often employed humor as a weapon where another would have used invective. Summed up, his sentiment as a publicist was well expressed when he said that 'whatever is, is right,' which would be an aphorism as final as it was lazy if it did not imply that whatever is not is wrong."

Among the New Decisions

"A precedent is valuable only in so far as it states the truth and not otherwise. We examine it not as a fact, but for its reasoning."
—Hon. M. F. Morris,

Admiralty — jurisdiction — collision with bridge. A collision between a vessel and a supporting pier of a bridge over a navigable waterway of the United States, caused by the negligent management of the vessel, and resulting in the collapse of a span of the bridge and its fall to the stream, is held in Martin v. West, 222 U. S. 191, 56 L. ed. —, Adv. S. U. S. 1911, p. 42, 32 Sup. Ct. Rep. 42, to be a nonmaritime tort, and a cause of action arising thereon is therefore not within the exclusive admiralty jurisdiction of the Federal courts, but the owner of the bridge may pursue the remedy afforded by a state statute, even though that law gives a lien on the vessel.

Broker — contract for commission above net price — interest in property. A contract by a man conferring the agency for sale of his homestead, which empowers the agent to get any sum which he can for his commission, above a stated amount which is to be net to the owner, is held in the Michigan case of Hayes v. McAra, 131 N. W. 535, to confer no interest in the property, and is therefore not void because not signed by his wife, and he will be liable for the amount of commission which the agent has succeeded in adding to the net price of the property, in case he refuses to convey to a customer which the agent secures.

This seems to be the first case in which this question has arisen where a homestead was involved, but the question has frequently been before the courts in relation to the statute of frauds.

The decisions pertaining to the latter phase of the question are gathered in the note appended to the Hayes's Case, in 35 L.R.A.(N.S.) 116.

Conflict of laws — suit on administration bond — compelling restoration of funds. Undoubtedly the general rule is that an executor or administrator cannot be sued in his representative capacity out of the state in which he was appointed. Special facts, however, may exist which will remove the case from the operation of the general rule, as stated. Such they were in the Mississippi case of Cutrer v. State, 54 So. 434, annotated in 35 L.R.A.(N.S.) 333, wherein it was held that an action in the name of the state to which the bond runs may be maintained upon it by one for whose benefit it is taken, in the courts of another state, which is the domicil of the obligors, to compel payment of the fund to the court which granted the administration, that it may be distributed according to law, where, the latter being the state of testator's residence, one of its citizens, to get possession of his personal property located in the former one, secures an appointment as administrator by its court, gives an administration bond running to the state, and then removes the fund without authority, and converts it to his own use, and becomes insolvent.

Conflict of laws — unrecorded lease — right to follow property — bona fide purchaser. One renting a machine to another for use in the state, whose lease did not require the contract to be recorded, and who reclaims the property as soon as he learns the facts, is held in the South Carolina case of Adams v. Fellers, 70 S. E. 722, not to lose his title in favor of a bona fide purchaser in another state, to which the lessee removes the property without authority, although the laws of such state require the recording of such contracts to give them validity against bona fide purchasers.

The recent decisions upon the necessity of recording an instrument creating a lien, or reserving title to personal property, in the state to which the property is subsequently removed, are discussed in the note accompanying this case in 35 L.R.A.(N.S.) 385, the earlier decisions having been presented in notes in 64 L.R.A. 356, and 64 L.R.A. 833.

Evidence — proof of agency — admission. That it is as competent to prove the admission by one that he is the agent of another, where that is the fact sought to be established against him, as it is to prove any other admission against his interest, is held in Blake v. Bremyer, 84 Kan. 708, 115 Pac. 538.

It should be noted that the admission of the alleged agent in this case was admitted as primary evidence of agency, and not as evidence to contradict or impeach the alleged agent as a witness. On the point involved, this decision is in accord with the few cases that have passed on this question as appears by the note appended to Blake v. Bremyer, in 35 L.R.A.(N.S.) 165.

Injunction — closing alley — municipal corporation. That a municipal corporation may be enjoined from closing an alley giving an abutting property owner access to and from the street, by constructing a sidewalk across it, and making it a penal offense to drive across the sidewalk, is determined in Crawford v. Marion, 154 N. C. 73, 69 S. E. 763, annotated in 35 L.R.A.(N.S.) 193.

The rule seems to be that the abutting owner may protect his right of ingress and egress from the street or highway to abutting property as against an unlawful obstruction, where he is specially damaged by the obstruction. This right is generally based on the fact that such easement of access is a property right, interference with which to the extent of wholly, or in many cases even materially, obstructing it, constitutes injury separate and distinct from that experienced by the public at large, sufficient to enable him to maintain a suit in equity.

Injunction — collection of judgment — set-off. It is well settled that equity has jurisdiction to restrain a judgment creditor from collecting his judgment against the judgment debtor, until a claim of the latter against the former has been judicially established, and then to permit an equitable offset of the one against the other, where the judgment creditor is either insolvent, or has no property out of which the judgment debtor can collect his claim, or has secreted his property in order to defeat the claim of the judgment debtor, the judgment debtor, in asserting his claim, being free from negligence.

So, it is held in Wells v. Cochran, 88 Neb. 367, 129 N. W. 533, annotated in 35 L.R.A.(N.S.) 142, that if an executor sued for his testator's debt is prevented from proving a set-off by the unconscionable conduct of an insolvent plaintiff, and by his own innocent mistake, a court of equity may, in its discretion, enjoin the collection of the judgment until the set-off is liquidated in an action at law, and subsequently set off the judgments so far as they equal each other.

Innkeeper — liability for agent's samples. It is quite well settled in accordance with the decision in the Oklahoma case of Williams v. Norvell Shapleigh Hardware Co. 116 Pac. 786, that where property is brought to a hotel for the purpose of sale or show, such as the goods of commercial travelers, the law does not hold an innkeeper to his strict liability, but only to the exercise of ordinary care, and answerable for negligence.

The cases pertinent to the question are collected in the note accompanying this decision in 35 L.R.A.(N.S.) 350.

Insurance — assignment of policy — insurable interest of assignee. That the holder of a valid policy of insurance upon his own life may, as a matter of financial necessity, make a valid assignment of the policy to a person having no insurable interest in the life of the insured, in consideration of a small sum of money and an undertaking to pay the premiums due and to become due, is held in Grigsby v. Russell, 222 U. S. 149, 56 L. ed. —, Adv. S. U. S. 1911, p. 58, 32 Sup. Ct. Rep. 58, and the assignee takes the entire interest in the policy as against the personal representatives of the insured.

Interpleader — rival tax claims. That a bill of interpleader will not lie to compel several taxing districts, each claiming jurisdiction over a trust estate because of difference of residence of its creator, the trustee, and the beneficiaries, to come into court and settle the question of which has the authority to levy a tax upon the estate, is held in Welch v. Boston, 208 Mass. 326, 94 N. E. 271, annotated in 35 L.R.A.(N.S.) 330.

Intoxicating liquor — scope of license — effect of petition. An unusual question was presented in the Pennsylvania case of Com. v. Spence, 79 Atl. 775, annotated in 35 L.R.A.(N.S.) 376, holding that the fact that a petition for license to sell intoxicating liquor asks only the privilege of selling vinous, malt, and brewed liquors does not limit the scope of the license issued thereon to such liquors only, where licenses provided for by the only statute authorizing their issuance are to include the right to sell spirituous liquors also, and the fee is paid under that statute.

Landlord — advances — surety — priority of rights. A landlord who, to enable his tenant to secure equipment, becomes surety on a note for the purchase price, secured by mortgage in which he joins, covering crops and equipment, is held in Tripp v. Harris, 154 N. C. 296, 70 S. E. 470, annotated in 35 L.R.A. (N.S.) 348, not to lose, in favor of the tenant, his lien for advances towards making a crop, and therefore, if he pays the note and takes an assignment of the mortgage, he may enforce his landlord's lien on the crops, in preference to that of the mortgage.

Lease — future building — refusal to occupy — damages. The few cases involving the question tend to support the decision in Oldfield v. Angeles Brewing & Malting Co. 62 Wash. 260, 113 Pac. 630, annotated in 35 L.R.A.(N.S.) 426, holding that an action lies against one who refuses to comply with his contract to lease, when completed, a building which the other contracting party agrees to erect for his use, although the contract is, in form, a present lease of a building of indefinite size without any mention of the land on which it is to stand.

This case further holds that the measure of damages is the difference between the amount stipulated in the contract as rent, and the sum for which the premises would rent to other parties during the stipulated term, plus such special damages as the lessor may plead and prove to have necessarily resulted from the breach of agreement.

Master — labeling bottles — employing minor. The work of placing labels on bottles filled with carbonated beverages is held in Herbert v. Parham, 86 S. C. 352, 68 S. E. 564, annotated in 35 L.R.A. (N.S.) 239, not to be inherently dangerous, although bottles are liable to explode if carelessly handled, and therefore it is not negligence to set a minor at such work.

Mortgage — foreclosure — sale — right of mortgagee to redeem. A mortgagee who has secured a decree for deficiency after sale of the mortgaged property in foreclosure proceedings is held in Strause v. Dutch, 250 Ill. 326, 95 N. E. 286, annotated in 35 L.R.A.(N.S.) 413, to be within the purview of a statute giving any decree or judgment creditor of the mortgagor the right to redeem the premises from the sale.

Negligence — runaway team — liability. That the duty of one in charge of a runaway team is to use such care as prudent men ordinarily use under like circumstances, taking into consideration the time, place, and condition of highway, is laid down in Kimble v. Stackpole, 60 Wash. 35, 110 Pac. 677, annotated in 35 L.R.A.(N.S.) 148, which holds that one in charge of a runaway team cannot be held liable for colliding with a vehicle on the highway to the injury of its occupant, if the runaway is not shown to have been due to his negligence, and he made an honest and earnest effort to avoid the vehicle, and endeavored to warn the injured person of his danger.

Partnership — advances — interest. Interest is held in Kilworth v. Ice, 84 Kan.

458, 114 Pac. 857, not chargeable on advances made to a partnership by one of its members, until a balance has been struck, unless there is an actual, but not necessarily express, understanding to that effect, or some special reason therefor, founded upon equitable considerations.

The case law pertaining to allowance of interest in favor of or against a partner during continuance of firm is discussed in the note which accompanies this decision in 35 L.R.A.(N.S.) 220.

Payment — by note — requisites to extinguish debt. The general rule is that a note given for a precedent debt will not be held to extinguish the debt, in the absence of an agreement to that effect. This rule was followed in A. Leschen & Sons Rope Co. v. Mayflower Gold Min. & Reduction Co. 97 C. C. A. 465, 173 Fed. 855, holding that the acceptance by a creditor of a promissory note of his debtor for his antecedent debt does not extinguish it, unless the note is paid. It is a conditional, and not an absolute, payment. A clear agreement by the creditor that he will take the risk of the payment of the note, and that the debt is discharged thereby, or an indubitable intention so to do, is requisite to extinguish a debt by the taking of the debtor's note.

This decision is accompanied in 35 L.R.A.(N.S.) 1, by an extensive and exhaustive note collating the case law on the subject of payment by commercial paper.

In regard to negotiable paper, the rule seems to be different in Maine, Massachusetts, and Indiana. The true rule, as worked out in most cases, is, the intention of the parties, expressed or implied, will control; but it must be that of both debtor and creditor. The authorities holding that giving a note does not extinguish the debt follow the common-law rule that one unexecuted contract cannot be pleaded in bar of another of the same degree. The exceptional cases taking the other view, and holding that the giving of a note extinguishes the debt, endeavor to support this by the law merchant in regard to the transfer of negotiable securities.

Some cases try to make a distinction, in receiving negotiable paper, between a pre-existing debt and one created by a present sale.

Shipping — duty of vessel to provide medicine. A vessel under 30 tons burden, making short trips of less than 40 miles on an inland lake, is held in Lapier v. Beaubien Ice & Coal Co. 162 Mich. 533, 127 N. W. 692, annotated in 35 L.R.A.(N.S.) 199, not to be liable to an injured employee because of failure to have on board medicines and appliances necessary to treat the injury.

Waters — riparian rights — grant of islands — title of bed. If, in a nontidal river, the title to the bed of which is in the riparian owner, the government at the time of making the original grants of its lands grants an island separately, the owner of the island is held in Wilson v. Watson, 141 Ky. 324, 132 S. W. 563, to have title to the bed of the stream between the island and the thread of the stream, if that is the state boundary, and he may claim islands which afterwards form upon such bed.

The recent decisions treating of title to islands are gathered in the note accompanying this case in 35 L.R.A.(N.S.) 227, the earlier decisions having been collated in a note in 58 L.R.A. 673.

Recent English and Canadian Decisions

Admiralty — towage contract — defective towing gear — effect of exemption clause. A condition in a contract of towage, that "the tug owners are not to be responsible for any damage to the ship they have contracted to tow arising from any perils or accidents of the seas rivers or navigation collision straining or arising from towing gear (including consequence of defect therein or damage thereto) and whether the perils or things above mentioned or the loss or injury therefrom be occasioned by the negligence default or error, in

judgment of the pilot master officers engineers crew or other servants of the tug owners," does not protect the tug owner from liability for injury sustained by the towed vessel in colliding with a pier-head, occasioned by the carrying away of the towing gear of the tug in consequence of the defective condition of rivets attaching the towing gear to the bunker casing, as the words of exemption in the contract, when reasonably construed, apply only to circumstances occurring after the commencement of and during the towage, and do not extend to defects existing before the towage began. The West Cock [1911] P. 208.

Bills and notes — indorsee taking third person's note as security as holder in due course. The mere existence of liability on the part of the maker of a promissory note not yet due is insufficient to constitute the holder of such note, to whom a third person's note has been transferred as security, an holder in due course of such third person's note, within the provisions of the bill of exchange act that an antecedent debt or liability may constitute the valuable consideration which will render one taking a note for value without notice of any defect in the title of the person who negotiated it, a holder in due course; unless such note is transferred pursuant to a previous agreement to give security. The indebtedness for which the secured note was given will not furnish a consideration for the transfer of the third person's note, the original consideration having been merged in the obligation. Bank of British North America v. McComb, 21 Manitoba L. Rep. 58.

Fraudulent conveyances — sufficiency of ex post facto consideration. Where property is conveyed by one person to another, who from motives of humanity and relationship has taken the former's children into his family, with the intention that such property shall be used for their support and maintenance, the continued maintenance of the children for some time thereafter furnishes an *ex post facto* consideration sufficient to support the conveyance and render it valid as against a subsequent purchaser for value. Eggertson v. Nicastro, 21 Manitoba L. Rep. 256.

Parent and child — liability of parent knowing infant's mischievous propensities for latter's tort. That the rule of common law that the parent is not, because of his family relationship, legally responsible to answer in damages for the torts of his infant child, except where he has knowledge of the wrongdoing and consents to it, or where he directs it or sanctions it, or ratifies it, or participates in the fruits of it, will not prevent the father of an imbecile boy of sixteen, who knows his son's want of intelligence, his habit of smoking and propensity to set fires, but who nevertheless permits easy access to matches and places him under no surveillance or restraint, from being held liable for damages for the destruction of a neighbor's property by fire set by the boy,—is held in Thibodeau v. Cheff, 24 Ont. L. Rep. 214.

Wills — restraint on alienation for lifetime of another. That the restraint on alienation contained in a testamentary provision by which testator devised to a son certain property "to be given him in possession at the time or immediately after his marriage, or in the event of his marriage not having taken place and his brother John Elgin Hutt be deceased, then to be taken into his possession at once. Said described 100 acres to be not sold by my son George Alonzo Hutt to any other person than to my son John Elgin Hutt for the sum of $1,400. In the event of the decease of my son John Elgin taking place before the decease of my son George Alonzo, then my son George Alonzo may sell the 100 acres as and to whom he pleases, or bequeath the same to whom he wills," is void as repugnant to the gift in fee, was held in Hutt v. Hutt, 24 Ont. L. Rep. 574, in which the English and Canadian decisions on the question are reviewed.

Quaint and Curious

A thousand fantasies begin to throng into my memory.—Milton

Lawyer and Mimic. Among the group of remarkable men comprising the Scottish Bar during the later years of the eighteenth century and the early decades of the nineteenth, not the least famous, says a writer in the Law Times, was Robert Cullen, a son of Professor William Cullen, the distinguished physician and lecturer. He was admitted a member of the Faculty of Advocates in 1764, and was noted not merely for his legal and literary attainments,—he contributed numerous papers to the Mirror and Lounger,—but also for the possession of extraordinary mimetic powers. As a mere boy, he would turn this natural gift to account for his own amusement, although, it must be said, its exercise was not invariably to the satisfaction of his elders. On one occasion we are told that he pleaded very hard to be allowed to accompany his father to the theater, but for some reason or other the request was refused, and he was told he must remain at home. A short time after the professor had set out, Mrs. Cullen heard what she supposed were his footsteps coming along the passage as if from his own room, and then his voice at her door, "Well, after all, you may let Robert go." Permission was accordingly granted, and Robert appeared at the theater, to the no small surprise of his father, who, on reaching home, remonstrated with his wife for allowing the boy to go, when, of course, it was discovered that the voice which gave the permission was that of the young wag himself. But not only had Cullen the gift of imitating the voice, with all its inflections, of the person mimicked; he was able also, as he grew older, to copy the very words and even thoughts of his subject. Dugald Stewart called him "the most perfect of all mimics." In his Memorials of His Time, Lord Cockburn tells how Cullen mimicked the grave Principal Robertson, the historian of Scotland, in ludicrous fashion. The principal had as a boarder and pupil young Lord Grenville, who one night was very late in reaching home, having, in fact, along with Cullen and other kindred spirits, been making a night of it. Cullen, knowing what would be sure to happen next morning,—that Grenville would be the recipient of a severe admonition from the principal,—betook himself very early to the house, walked up with grave step to Grenville's room, and, seating himself behind the curtain, proceeded to lecture the headachy penitent on his misconduct of the previous night, and the evils of late hours and dissipation. Grenville expressed himself exceedingly contrite, and was profuse in promises of future amendment. Very shortly afterwards the principal himself entered his pupil's room, and commenced an harangue almost word for word with that delivered only a few minutes previously. Grenville could not help remarking that it was somewhat hard that he should be so severely taken to task twice over the same offense, whereupon the principal, guessing what must have happened, rose to depart with the words, "Oh, I see how it is; that dog Cullen has been here before me!" But the most amusing exhibition of his wonderful powers of mimicry belongs to the time when he was at the bar, and before he had attained any great professional eminence. His powers as a mimic having come to the ears of the lord president of the court of sessions, the latter expressed a strong desire of being a witness to them. Accordingly, the young advocate, with various

others, was invited by his Lordship to dinner, and, after the cloth was removed, Cullen gave some imitations of various members of the bar. The president was delighted, and intimated to Cullen that he need not limit himself to the bar, but might also give imitations of members of the bench. Most of the judges were then hit off to perfection, the president and all the others of the company being convulsed with laughter at the performance. After a little while his Lordship said: "But why am I to be excepted? I cannot really allow this." Cullen declared he could not for a moment think of attempting to take off his host,—that would be too gross a breach of manners; however, after much persuasion, he yielded to his Lordship's pressing request. The lord president was given to the very life. Everyone present, except the president, screamed with laughter. Unable to conceal his wrath and chagrin, the august victim of the young mimic then managed to ejaculate: "Very amusing, Mr. Robert,—very amusing; truly, ye're a clever lad,—very clever; but just let me tell you,—that's no the way to rise at the bar,"—which is only another instance of the strange inconsistency of even great minds.

Despite his powers of mimicry, however, and despite the prophecy of the chagrined president, Cullen did rise at the bar, and, had it not been for his constitutional indolence, might have left a much greater mark on the annals of Scot's law than he has done.

In 1796 he became a judge of the court of sessions, and in 1799 was appointed one of the lords of justiciary, the duties of these offices being zealously performed till his death in 1810.

The Film in Court. The importance of the moving picture as evidence was recently demonstrated in a remarkable way in a supreme court case in New York state. Last May, Mortimer D. Smith, of Sandy Creek, attempted to board a street car in Rochester, N. Y. He missed his footing, was dragged for some distance, and more or less injured. He brought suit alleging that his injuries were permanent, naming the New York State Railways as defendant, and demanded damages in the sum of $20,000. It came to the ears of the attorneys for the defendant that Smith was not so seriously injured as to prevent his walking with very little aid from the crutches, which he claimed were absolutely necessary. One morning during the summer a gypsy wagon drew up in his lane, and he came out vigorously protesting against the trespass. The fact was that the gypsy wagon was a ruse hit upon by the defendant's attorneys, to show that he was not so badly hurt as he represented. In the interior of the wagon was a moving picture machine and several detectives of the railway company, all disguised as gypsies. When the case came on for trial in the supreme court at Albion, Smith told his story and produced his crutches. Attorney Willis A. Matson representing the defendant said little, but when the proper time arrived, he received permission from the court to give a moving picture demonstration with Smith in the leading role. The court room was darkened, and, in the presence of the jury and a limited number of spectators, the plaintiff was shown as he appeared when he approached the pseudo gypsy wagon in a condition exceedingly active for one suffering the permanent injuries which he had described upon the witness stand. Smith denied that he was the man in the picture, but the verdict of the jury seemed to bear out the success of the unique evidence. The plaintiff was awarded only $350.

The Marshal Ducked. "This infernal outrage has got to stop right here." The village marshal of Dunkirk was speaking, and his voice startled every person in the crowded theater. Everybody turned to listen, and the manager of a repertory company, playing at the theater, who was making an announcement from the stage, stopped talking.

"This is a Christian village," said the marshal, bursting forth again in torrents of pent-up wrath. "I have heard of this white slave trafficking, and as an officer of the law I am not going to permit it to be carried out here in Dunkirk. It is wrong to give a baby away, and a crime to put a baby up in a raffle," concluded the marshal.

The manager of the show had been making an announcement about the giving away of a white baby to the person holding the lucky ticket. The marshal ordered the show manager to accompany him.

The manager realized the humor of the situation, and refused to go unless a warrant was produced. While the marshal had gone to get the warrant, the drawing was finished. The manager of the theater presented the holder of the lucky ticket with a white baby duck. A dentist's wife received the "baby."

Representation of Deity on Stage. The Deity can no longer be represented on any stage in New York, by act of the state legislature. The law went into effect on September 1st, and is so broad and comprehensive in its provisions that it will interfere with the presentation of many plays, especially those by foreign playwrights. In the opinion of lawyers, even "Everyman," the famous old English morality drama, cannot be acted, as one of the characters is the Creator.

Plays such as "La Samaritaine" are prohibited, and it is doubtful if even those in which Christ is not actually seen may be produced. In some dramas of the latter class the Christian Saviour is indicated by a white light and his voice is heard behind the scenes. While a test case will probably be necessary, it is feared that this may be regarded as a violation of the law. The "Passion Play," of course, becomes impossible in New York so long as the present statute remains on the books.

It is intimated that even "Parsifal" may be barred, for the law reads "any living character representing the Deity or known by any appellation which, by the recognized standards of any particular form of religious worship or belief, indicates the Deity or is reasonably referable alone to the Deity."

An interesting comment on this statute may be found in the article by Dr. Algernon S. Crapsey, which appears in this number.

When is a Hat not a Hat. Remember the ancient days, queries the Atlanta Constitution, when an eminent comedian of burnt-cork attainments propounded a question to the perfectly appareled person seated in the center, which sounded something like this: "When is a door not a door?" And when the perfectly appareled person in the center admitted dense ignorance, and in turn asked the comedian of burnt-cork attainments, "When is a door not a door?" and the eminent comedian responded, "When it is ajar," and there were gales of merriment? Of course, you do.

But in this good day and time there is no eminent comedian of burnt-cork attainments to answer such puzzlers, and to-day there are men puzzled over the question, "When is a hat not a hat?" and there is no one to answer.

The laws and ordinances of the city of Atlanta provide that all persons shall remove their hats while in a theater. Obviously, these laws and ordinances were passed for the benefit of mere man. No man was ever known to wear his headgear in a theater save some bucolic and unlearned citizen of the mountain fastnesses.

With woman, the situation is different. To the normal woman, her hat is her most prized possession. It is more to be exhibited than her complexion. The hat is the badge of her femininity, and it proclaims her position in the world. Then, beyond peradventure, the hat should be worn in the theater, the place where it can be gazed on by the most people at one time.

Assuredly, woman rebelled against the taking away of this, her most priceless privilege. Laws must be obeyed. The declaration is an axiom.

Feminine minds are not unreasoning minds though. They have been taught by the sterner sex that there are few laws which cannot be evaded. The question arose how to evade the law? 'Twas easy. The law provided against wearing hats in theaters. It said nothing about caps. Therefore the theater cap was invented. The theater cap looks something like those things that aviators wear on the heads they risk, but they are susceptible of adornment. They can be decorated as readily and as effectively as ever was "merry widow" or picture hat, peach basket, or

the dozen other kinds of things that milliners invent to make husbands' pockets moan.

The women decorated. They did it so thoroughly that man's theatrical vision is still as limited as it was before the city father said they should see.

The theatrical managers rebelled. They instructed their ushers to compel the removal of the headgear. Those instructed to do so simply smiled prettily, and said, "This is not a hat. It is a cap." The ushers were nonplused. So were the managers. Some have declared that the cap must go. Others have simply remarked, "You can't beat a woman. It's ungentlemanly in the first place, and you need a club in the second."

What's in a Name? Mlle. Emmy Destinn, the Bohemian prima donna of the Kaiser's Royal Opera, has triumphed by a remarkable decision of the Austrian supreme court. According to this decision, a person who signs a promissory note in a stage name is not responsible for its payment. While Mlle. Destinn, whose name in private life is Emilie Kittel, was singing in London in 1908, she borrowed $800 from a Prague master tailor, to whom she gave a bill of exchange, signed in the name under which she had won international fame. The note not having been paid when due, the tailor sued Mlle. Destinn, but she set up the defense that the note was not legal because it did not bear her real name. The supreme court has decided that it is justifiable, and ordered the plaintiff to pay the costs of the litigation.

A Realistic Performance. Because of the disagreeable weather and fears of a lynching, the sheriff, on December 14th last, hanged the Rev. William Turner in the opera house at Jackson, Georgia.

It was the first hanging ever held in a theater.

Turner was a negro preacher. He confessed to firing the shot that killed Jesse Singley, a prominent planter, during a race riot.

Friends and relatives of the condemned negro occupied boxes and front seats at the execution.

They evaded the rain, which wet a large crowd that waited outside the playhouse. It was composed of white persons denied entrance by the sheriff.

During the morning the gallows was erected on the stage of the opera house, and at noon the negro was marched to the scene. Before the trap was sprung, the negro confessed that he incited the riot and that he also fired the shot that killed Singley. He warned the members of his race to let whisky alone and to be advised by the whites.

Turned a Lion Loose. While tourists were visiting the historic forest of Fontainbleau near Paris, on February 3, they became wildly excited when they heard the bleating of a sheep which was quickly followed by the roar of a lion. The tourists fled in a panicky state and soldiers were hastily summoned.

They found the lion devouring the sheep and at the command of the officer fired and killed the king of beasts.

It was learned that a moving-picture man had bought the lion and sheep and had let the lion loose on the sheep to get a good picture. The thing failed because when the cinematograph operator heard the roars of the lion he fled.

The man who engineered the scheme has been requested to appear before the courts. He stands a good chance of going to jail.

Paternal Jesters. Mr. Four Miles, of Central Village, near Bridgeport, Connecticut, says the Chicago Record-Herald, has applied to the courts for permission to change his name to Frank Miller. In his petition he represents that his father, Basil Miles, being a man of odd conceits, named his five sons after the first five numerals. One Miles and Three Miles have already had their names changed by the courts. Two Miles appears to be satisfied with the odd label his father gave him, and Five Miles, the youngest of the family, cannot do anything to relieve his situation until he becomes of age, next year. He then intends to make application to the court to change his name to Lewis Miller.

A similar case can be found in Nebraska, where a man named Millions called his four sons after the first four numerals, One Millions, Two Millions, Three Millions, and Four Millions. Two of the brothers have sought relief from the imposition in the courts, and the other two invariably sign their names with initials only.

There is a family in Dallas, Texas, named Billions. The father evidently was too sensible to play any such joke upon his offspring, although he manages to get a good deal of fun out of his unusual name, and often declares that he is the richest man in the world, having seven Billions,—four girls and three boys.

A groceryman in Clinton, Iowa, bears the name of "Through Trials and Tribulations We Shall Enter the Kingdom of Heaven Lindloff," although the sign over his store reads merely "T. H. Lindloff, Grocer," and he is familarily known among his customers and the people of Clinton as "True Lindloff." His father was a justice of the peace and also a grocer of deep religious convictions, and, when his first son was born, insisted that his name should be selected from the Bible as Providence should direct.

After remonstrating for several days, Mrs. Lindloff finally consented, and it was agreed that after being blindfolded she should open the pages of the Bible at random, and place her finger upon a text, which should be adopted wholly or in part as a name for their child. The plan was carried out and the verse which the unfortunate man now carries as a name was thus selected by chance.

A Tailor-Made Judge. Milton E. Ailes, of Washington, who used to be private secretary to the Secretary of the Treasury, and who is now one of the leading bankers of the capital, reverted the other day to the philosophy of good clothes, says a Washington despatch to the Boston Herald.

"When I was private secretary," said he, "I made an observation and purchased a Prince Albert coat, as the garment was called in those days. I discovered that when I wore that coat during office hours, many callers were disposed to treat me more respectfully and I got along better. One cannot afford to dress shabbily."

Scott C. Bone, probably the greatest newspaper editor Washington city ever had, heard Ailes's comment and added one of his own. "Beriah Wilkins was in Congress from Ohio, during Cleveland's first administration," said he. "A democratic constituent, who had graduated from college and met with no success as a practitioner at law, sought an office. Beriah told him to come on to Washington. The constituent came, a big handsome fellow, but in apparel the worse for wear, and very much down on his luck. They visited a local hand-me-down, and the congressman purchased for his old time friend a good frock coat, a silk hat, and the articles that match. Then they set out for the White House.

"Cleveland was mightily taken with the manly appearance of this Ohioan, who was going to ask for a chief clerkship in one of the departments, and, if he could not get that, for a clerkship. The President looked him over steadily for a few minutes.

" 'Are you a lawyer?' he asked.

"The Ohio visitor confessed with some hesitation that he was.

"Cleveland looked him over a little more and asked how he would like to be chief justice of a Western territory, now a big state.

"Well, the office of chief justice was bestowed upon the handsome visitor, for whom Beriah Wilkins had bought the new coat. Furthermore the Ohioan made good as chief justice."

New Books and Recent Articles

"The Constitutions of Ohio and Allied Documents." By Isaac Franklin Patterson, A.M., LL.B. (The Arthur H. Clark Company, Cleveland, Ohio). $3, net, express paid.

This valuable work covers a new field. It is the first attempt to trace the development of constitutional ideas and practices in Ohio. The period covered is from 1787 down to and including 1911. It is believed that the full texts of the Constitutions, of all amendments, and of all proposed amendments, have been included. The majority of the proposed amendments and much of the historical data have never before been published, nor even printed. They are only available by careful search among the state papers at Columbus.

The publication of this volume, contemporaneous with the sessions of the state constitutional convention, renders it very timely. Remodeling the organic law of a state is the most important duty that can be entered upon by a sovereign people. Such a task can only be properly performed, either by the delegates in convention assembled, or by the electorate to whom their labors will be submitted, in the light of the history of the past and the exigencies of the present. They may find much to guide them in the pages of this volume.

The author has performed a public service in the collection of the original texts, with historical data, and in the scholarly introduction which he has prefixed to the body of the work.

A topical index furnishes the student quick reference to subjects and to the various phases of Ohio constitutional history.

"The Law of Personal Injuries." By Hon. John L. Hopkins. (The Harrison Company, Atlanta, Georgia.) 2 vols. $12.

In these two volumes Judge Hopkins discusses the law of personal injuries and of damage to property by railway trains as presented by the statutes of Georgia and the decisions of the supreme court and court of appeals of that state.

In treating this difficult and important subject, he has gathered a wealth of material, which he has thoroughly and accurately classified. The kindred decisions are grouped together with a nice sense of their relative value and importance. The Code sections relating to the various subdivisions are given in their integrity, while the decisions are so focused as to disclose the present state of the law, and to illuminate questions which were doubtful and obscure.

Judge Hopkins has rendered a splendid service to the bar of Georgia, and to every member of the profession who may have occasion to consult the laws of that state upon this subject.

"Elements of English Law." By W. M. Geldart, M.A., B.C.L. (Henry Holt & Company, New York city.) $.50, net.

One in search of a clear, direct, and accurate statement of the basic principles of the English legal system, can find it in this volume. The author is Vinerian professor of English law at Oxford, and has presented a readable volume which may be perused with profit by the law student, the general reader, or the practitioner who would familiarize himself with the salient features and present status of the main subdivisions of the laws of England.

"Classics of the Bar." Vol. II. By Alvin V. Sellers. (Classic Publishing Company, Baxley, Georgia.) $2.

This is the second volume of a compilation of forensic masterpieces by the author. It contains speeches by some of the giants of the bar, such as Daniel Webster, Senator Voorhees, Senator Vest, and Ben Hardin,—men who in their day charmed courts and swayed juries by their eloquence.

The work is illustrated and attractively prepared. It fulfils the grateful function of preserving, in readily accessible and convenient form, some of those splendid efforts of genius which form the heritage of the bar, and which an appreciative world will never willingly permit to perish.

Loveland on "Bankruptcy." New and greatly enlarged edition. 2 vols. Buckram, $12.

Paine's "Banking Laws, 1911 Supplement." $.50.

Bays's "American Commercial Law Series." A series of small text-books on business law for business men, bankers, students, and men of affairs, with forms. 9 small vols. Full set, $12. Single vol. $1.50.

Dassler's "Kansas Form Book." $6.

Dassler on "Taxation in Kansas." $6.

Groat's "Attitude of American Courts in Labor Cases." Paper, $2.50. Cloth, $3.

Fuller's "Law of Mexican Commercial Corporations, Including Foreign Corporations in Mexico." Buckram, $5.

Pattison's "Missouri Form Book." Revised by W. W. Herron. $6.50.

Bailey's "Personal Injuries." 2d ed. 3 vols. Buckram, $19.50.

Fiero on "Special Proceedings." (New York.) 3d ed. 2 vols. Canvas, $15.

Kleinschmidt & Highley's "Oklahoma Form Book." 3d ed. $6.

McElroy's "Taxable Transfers, 1911 Supplement." $.50.

King's "Conflicting Texas Civil Cases." 3 vols. $14. Vol. 3, $6.

Recent Articles of Interest to Lawyers

Acknowledgment.

"Illegal Practices with Reference to Certificates of Oath or Acknowledgment."—28 Bench & Bar, 11.

Agriculture.

"Back to the Farm."—The Century, February, 1912, p. 623.

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"The Fate of Alaska."—The World's Work, February, 1912, p. 422.

Anti-Trust Law.

"Federal Legislation for the Guidance of Commerce."—18 Case and Comment, 491.

"Government Regulation of the Trusts."—18 Case and Comment, 502.

"The Cause of Federal Justice."—18 Case and Comment, 506.

"An Interpretation of the Standard Oil and American Tobacco Cases. Do They Read the Word 'Unreasonable' into the Law?"—18 Case and Comment, 519.

"The Enforcement of the Anti-Trust Law."—The Century, February, 1912, p. 616.

"The Harvester Company."—The Fra, February, 1912, p. 137.

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"Reversed, with Finding of Facts."—43 National Corporation Reporter, 821.

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"The Limits of Counsel's Legitimate Defense."—17 Virginia Law Register, 743.

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"Fraudulent Conveyance Law and Bankruptcy."—17 Virginia Law Register, 737.

"Reservation of Title as Affected by Bankruptcy."—15 Law Notes, 206.

"Separation Orders and Bankruptcy. (Effect of bankruptcy on husband's liability under separation agreement.)"—76 Justice of the Peace, 3.

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"Bank Guaranty Laws."—15 Law Notes, 206.

"Scope and Functions of the Proposed National Reserve Association."—14 Trust Companies, 35.

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"The Negotiable Instruments Law."—28 Banking Law Journal, 989; 29 Banking Law Journal, 22.

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"Justice Harlan."—60 University of Pennsylvania Law Review, 297.

"Judson Harmon."—The Outlook, January 27, 1912, p. 175.

"James Iredell: Lawyer, Statesman, Judge."—60 University of Pennsylvania Law Review, 225.

"Roger Brooke Taney."—46 American Law Review, 1.

"John Henry Wigmore."—24 Green Bag, 3.

"Woodrow Wilson."—The World's Work, February, 1912, p. 466.

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"What's the Matter with Business?"—The Outlook, February 3, 1912, p. 267.

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"The Neglect of Patients in Hospitals."—15 Law Notes, 207.

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"Control of Corporations Engaged in Interstate Commerce."—18 Case and Comment, 512.

"The Relation between Business and Government."—18 Case and Comment, 516.

"The Imprisonment of Criminal Corporations."—18 Case and Comment, 527.

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"Costs in Claim of Right Cases."—76 Justice of the Peace, 38.

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"The Alleged Usurpation of Power by the Federal Courts."—46 American Law Review, 45.

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"The Running with the Land of Agreements to Pay for a Portion of the Cost of Party Walls."—10 Michigan Law Review, 187.

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"The Laying Out of New Streets."—76 Justice of the Peace, 37.

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"Guardianship of Children."—44 Chicago Legal News, 180.

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"The Moslem International Law."—28 Law Quarterly Review, 89.

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"Nationalizing the Railroads."—18 Case and Comment, 530.

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"How Far Interests Limited to Take Effect 'When Debts are Paid' or 'an Estate Settled,' or a 'Trust Executed and Performed,' are Void for Remoteness."—6 Illinois Law Review, 373.

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"History of the Work of the Bill of Lading Committee of the American Bankers' Association in Its Relation to the Central Bureau Plan. (Bills of lading as collateral securities.)"—14 Trust Companies, 13.

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"The Boston Police Department."—2 Journal of Criminal Law and Criminology, 672.

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"The Land Clauses of the Finance (1909-10) Act, 1910, Some Ambiguities, and Two Recent Decisions." —28 Law Quarterly Review, 78.

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"A Comparative Study."—The Century, February, 1912, p. 609.

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"Legal Cause in Actions of Tort. III."—25 Harvard Law Review, 303.

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"The Present Plight of Labor and Work."—The World's Work, February, 1912, p. 409.

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"The Trial of Cases in Pennsylvania."—60 University of Pennsylvania Law Review, 254.

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"Buying a Piece of Land."—46 American Law Review, 60.

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"The New Washington."—Scribner's Magazine, February, 1912, p. 129.

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"Stream-Water Rights in Illinois."—6 Illinois Law Review, 382.

Wills.

"On Wills."—3 American Law School Review, 69.

Photo by White, N. Y.

The Trial Scene From "A Butterfly on the Wheel"

New York's Latest Drama in which Lawyers are Portrayed

READERS of CASE & COMMENT will recall Henry C. Spurr's stirring article in the May, 1910, issue founded on Charles Klein's great drama, "The Third Degree," followed by Alexander Otis's entertaining article on "The Stage Lawyer," in the November, 1910, issue, founded on "Madam X." Both Mr. Spurr and Mr. Otis are lawyers, who, finding how seldom the profession was accurately portrayed on the stage and realizing the unusual dramatic interest connected with court scenes and their workings, urged a correct interpretation in the drama of the parts played in real life by members of the profession.

In New York to-day the lawyers are enjoying a remarkable production entitled, "A Butterfly on the Wheel," which Sam S. & Lee Shubert are presenting at the 39th Street Theater. The trial scene reproduced above takes place in the Divorce Division of the High Court of Justice, London, where Miss Madge Titheradge, the English Actress, is seen in the part of the accused wife, Mrs. Admaston.

An admirer had trapped her into spending a night in a Paris hotel, the husband having been notified beforehand. The trial scene shows the severe, and, to the audience, obviously unjust examination of the defendant, who is a slight woman of exquisite personal charms. She cries out: "The truth! What is the truth to you? It's not the truth you want—it's me—my very soul—that's what you want—not to wring the truth out of me, but just so much of it as will serve your ends. It's a trap,—a trap, I say . . . I am not surprised now that innocent women in hundreds let their cases go by default, rather than face the humiliation and torture of this awful place . . . I never knew that the law—man's law—made no difference between the opportunity to do wrong and the giving way to it. I know now."

A feature of the bill board advertising that is attracting attention is the single sentence on the boards, "The Famous Divorce Trial of Admaston v. Admaston Takes Place Every Night at 10 o'Clock."

Judges and Lawyers

A Record of Bench and Bar.

Hon. Emory Speer

JUDGE OF U. S. DISTRICT COURT

Southern District of Georgia

THE commission of this eminent southern jurist bears date the 18th of February, 1885. A native of Georgia, sixty-three years of age, he has been district judge for twenty-seven years. He had previously served his state as solicitor general, and as representative in the 46th and 47th Congress, always opposing and being opposed by caucus nominations. He was a member of the elections committee in his first term, and of the ways and means in his second. Of the latter committee, William D. (Pig Iron) Keeley, of Pennsylvania, was chairman, and it had as members such famous names as William McKinley, Samuel J. Randall, William Morrison, John G. Carlisle, and John A. Kasson. A member of the committee of conference between the Senate and the House, whose report was, on the 3d of March, adopted as the tariff of 1883, two days later he was appointed by the President United States attorney for the northern district of Georgia.

While he had been strikingly successful as an advocate and trial lawyer in Northeast Georgia before his election to Congress, he was now, in wealthy and crowded Atlanta with its eminent bar, to have his broadest opportunity for professional distinction. While his victories were many, perhaps the most noted was the verdict of conviction for conspiracy reported in Ex parte Yarbrough, 110 U. S. 651, 28 L. ed. 274, 4 Sup. Ct. Rep. 152, since then the leading case in national jurisprudence on that topic. While still United States attorney, again, by Mr. Arthur, he was appointed to the judgeship of the southern district, comprising about two thirds of his state. The courts of his district are held at Augusta, Savannah, Valdosta, Albany, and Macon. The last city has been his home for twenty-five years.

It was said by a widely known contemporary text writer that, more than with most trial judges, Judge Speer has had the lot to try novel and interesting cases. The reports will verify this comment. Conspiracy and resulting murder, to deprive one of constitutional rights, peonage, violations of the anti-trust legislation, of the laws to regulate interstate commerce, embezzlement of millions of public money, and many other conspicuous offenses, have afforded in his court striking illustration of the value and majesty of the National Criminal Code. The *cause celebre* of the United States, Green v. Gaynor, gave a signal instance of his skill and provision as a trial judge. For four months the trial was driven along with unrelenting tenacity. The evidence covered the engineering transactions on the coast and rivers of the state for a quarter of a century. Predictions that the case would break down from sheer weight were heard on all sides, but with great care the health of

the jury and the accused was maintained, and a verdict on every count of the consolidated indictments, invaluable to the integrity of the treasury in this day of vast appropriations, was rendered. Notwithstanding the gigantic record, and more than 600 assignments of error by the prisoner's counsel, the conduct of the trial received the approval of the circuit court of appeals and the Supreme Court. In the rehabilitation of insolvent corporations, and in the large percentage of dividends to assets in bankruptcy litigation, the success of Judge Speer has been most notable. Not less noted as an orator and literateur, his lectures on the Storrs foundation at Yale have been published with the title, Lincoln, Lee, Grant, and other Biographical Addresses." As Dean of the law faculty at Mercer University, he devotes much of his leisure in imparting to southern youth the conception of the organic law as it was interpreted by Marshall and defended by Webster. He is fond of field sports and is an untiring horseman. The History of the Orphan Brigade, C. S. A., Kentuckians, in which he was a private, records of this Union-loving judge, "he enlisted when he was but a stripling of a boy, but he made a good soldier."

JUDGE SPEER
and his home
"The Cedars"

"It is the distinction of Judge Speer," writes Dr. Charles Ray Palmer, of New Haven, "that he was one of the earliest of the men of the South clearly to perceive the immense desirableness of this political renovation" [the reunifying of a divided nation], "and set himself intelligently and heartily to do a man's utmost toward it. In this patriotic endeavor he has never wearied. To make it successful he has spared no exertion. By precept and example, by word and by deed, privately and publicly, as a citizen and as a judge, he has striven to hasten the happy issue which now one need not be over-sanguine confidently to expect."

Judge Ulric Sloane.

Ulric Sloane, former law partner of ex-Senator Foraker, and recognized as one of the three greatest criminal lawyers that ever practised in Ohio, an authority on insanity in criminal law, with a record of having participated in more than 200 murder cases, died on January 21, in Cincinnati, of a complication of diseases, at the age of sixty-one, in exact accord with a prediction he had frequently made. Mr. Sloane had told a number of friends: "My father died when he was sixty-one, and I will die at that age, or live to be a thousand."

Judge Sloane has been a resident of Columbus for the past fifteen years. Previous to that he resided at Hillsboro, Chillicothe, and Cincinnati.

Hon. Rufus E. Foster

DISTRICT JUDGE, EASTERN DISTRICT OF LOUISIANA

By Judge S. R. Davis

HONORABLE Rufus E. Foster was born in Mathews county, Virginia, May 22, 1871. He removed with his parents to New Orleans in 1881. He was educated in the public schools of New Orleans, at Soule College, New Orleans, and Tulane University. He was admitted to the bar at New Orleans in May, 1895, and practised in New Orleans continuously thereafter, except from May, 1898, to April, 1899, when he enlisted in the Second Louisiana Volunteer Infantry in the Spanish - American War. While in this service he was adjutant general on the staff of Brigadier General W. W. Gordon, until appointed one of the commissioners to take over the Island of Porto Rico, after which he returned to his regiment.

HON. RUFUS E. FOSTER.

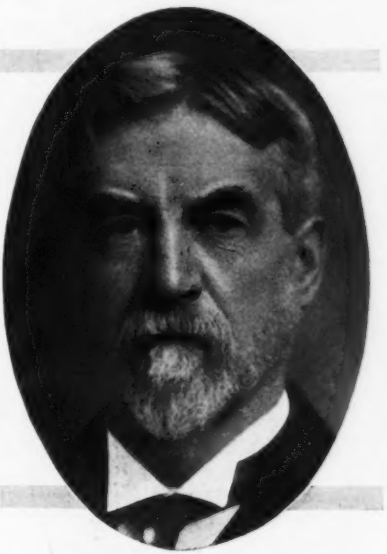
In 1905 he was appointed assistant United States attorney by the late judge William Wirt Howe, and served as Judge Howe's assistant until Judge Howe's death, when he was appointed United States Attorney, January 1, 1908, by President Roosevelt. On the resignation of United States District Judge E. D. Saunders, Mr. Foster was appointed his successor by President Roosevelt, February 2, 1909.

Judge Foster is one of the youngest men ever appointed to the Federal bench. During his brief incumbency he has presided in many important trials, notably the Adler Case, the Tilton Will Case, and the famous Knight, Yancey & Company Case. The latter cause is one of international interest. The bankruptcy of the firm of Knight, Yancey & Company, of Decatur, Alabama, and that of Steele, Miller, & Company, of Corinth, Mississippi, startled the financial world by the exposure of the fact that these firms were in the practice of obtaining money on forged bills of lading on cotton purporting to be consigned to leading European firms. Afterwards the cotton was sent and the forged bills of lading were replaced by real bills of lading. In the Knight, Yancey, & Company Case a jury was waived, and Judge Foster heard the case on agreed statement of facts. His decision against the trustee in bankruptcy, and in favor of the foreign firms, was sustained by the United States court of appeals, as were also his decisions in the other leading cases mentioned.

Although on the bench but three years, Judge Foster has won the esteem and admiration of the leading members of the bar who practise in his court. New Orleans, by reason of its cosmopolitan character, and its position as the metropolis of the South, and its growing importance as a shipping port as the Panama canal approaches completion, invests the terms of the Federal court in that city with increasing importance, and it is fortunate that one of its judges possesses the many strong qualifications of Hon. Rufus E. Foster.

William Rush Taggart

MR. William Rush Taggart is one of the prominent corporation lawyers in the United States. That the Western Union Telegraph Company has been able to secure his services as its general counsel is greatly to its advantage. He has done work for the corporation of the kind that it is impossible to estimate in mere dollars and cents, for it is a well-known fact that a vast telegraph system, with ramifications throughout the country, is more dependent upon its legal talent than almost any other commercial enterprise. It is no light task to steer such a concern through the endless lawsuits in which it inevitably becomes entangled. In serving the Western Union Mr. Taggart has, of course, also served himself. The energies which he has brought to bear on his great work have given him an enviable position in the legal world.



WILLIAM RUSH TAGGART

Mr. Taggart was born on September 4, 1849, in Smithville, Ohio, the son of William W. and Margaret J. (McCaughey) Taggart. He is of Scotch-Irish descent, his forefathers emigrating from the British Isles to Pennsylvania in 1762. In 1798 they moved on to Ohio, where they were pioneer settlers. His father hailed from Saint Clairsville, Ohio, while his mother was a native of Canton, Ohio.

He received his education at Wooster, Ohio, attending high school in that town, and subsequently entering the University of Wooster. He graduated from the latter in 1871.

As a boy Mr. Taggart had never had any doubt that the law should be his life work. He matriculated in the Law Department of the University of Michigan, receiving his LL.B. in 1875. In 1900 the University of Wooster paid a tribute to its brilliant *alumnus* by conferring upon him the degree of LL.D.

Mr. Taggart's first professional association was with Mr. C. M. Yocum, of Wooster, Ohio, where they established the firm of Yocum & Taggart. While a member of this firm, Mr. Taggart was afforded the opportunity of helping his partner in some litigation then pending against the Pennsylvania Company in Ohio. His work in connection with these cases showed such promise that he was offered a position in the office of the solicitor for that district of the Pennsylvania Company, at Salem, Ohio. Mr. Taggart accepted this offer in November, 1875, and for two years proved his worth to such good effect that, upon the appointment of his superior to a higher position at Pittsburg, Mr. Taggart was made solicitor of the Pennsylvania Company in Ohio. He served in this capacity for ten years, having entire charge of the northwestern lines.

Mr. Taggart then located in New York, with the celebrated railroad attorneys, Judge Dillon and General Swayne, who, under the firm name of Dillon & Swayne, were counsel for the Western Union Telegraph Company, the Gould Lines, and the Union Pacific Railroad Company.

Mr. Taggart's practice in New York has been largely for corporate clients, including the Pennsylvania Company, Western Union Telegraph Company, Wabash Railroad Company, C. H. & D. R. R. Company, Texas & Pacific Railway Company, and others.

Hon. David D. Shelby

JUDGE OF THE U. S. CIRCUIT COURT OF APPEALS

HON. David D. Shelby was born in Madison county, Alabama, October 24th, 1847. He was educated as a lawyer at Cumberland University, Lebanon, Tennessee. He was admitted to the bar in 1870, and admitted to practice in the Supreme Court of the United States in 1880. He practised his profession in Huntsville, Alabama, up to 1899, when he was appointed United States circuit judge by President McKinley, for the fifth circuit, comprising the states of Alabama, Florida, Georgia, Mississippi, Louisiana, and Texas.

During the past thirteen years, as judge of the United States circuit court of appeals, Judge Shelby has delivered a great many important opinions, which are preserved in the reports of the United States circuit court of appeals. These reports are cited in all the courts as masterly and luminous expositions of the important questions of law involved in each case. Among these cases, that *cause celebre*, the Greene and Gaynor Extradition Case, is one of the most notable, and Judge Shelby's opinion in that case is an important contribution to the law of extradition. Another notable case in which Judge Shelby delivered the opinion in the court of appeals was the Waters-Pierce-Standard Oil Case, which was affirmed by the United States Supreme Court.

After the death of Mr. Justice Harlan, Judge Shelby's name was frequently discussed by the bar of the country in connection with the succession. It is safe to say that Judge Shelby's ability is recognized by the bar of the country and highly appreciated. Personally he is a man of gracious qualities and dignified bearing, and with the attorneys and litigants who have business in his court, he is especially esteemed as an upright judge and courteous gentleman.

HON. DAVID D. SHELBY

Death of Judge Crew.

Former Judge William B. Crew, of the Ohio supreme court, died suddenly on January 24.

Judge Crew was born in Morgan county, April 1, 1852. He was educated at Westtown College and Ohio State University, studied law at the Union Law School, and was graduated in 1874. Two years later he was elected prosecuting attorney of Morgan county.

He was elected a member of the legislature in 1889, and to the common pleas bench from 1891 to 1892, when he was appointed to the supreme court bench to fill the vacancy caused by the death of Judge M. J. Williams.

After his retirement from the supreme court bench, Judge Crew removed from McConnellsville, where he had lived many years, to Cleveland, and entering into a law partnership with his son, Fleming Crew, which continued until the latter's recent appointment as assistant in the attorney general's office in Porto Rico. Judge Crew then returned to McConnellsville.

The Humorous Side

You cannot gravely contemplate a laugh. Laughter is the most infectious thing in the world.

The World's a Stage. "Say, why didn't you stop that thief?" panted the fat policeman, as he came up to a man who was calmly viewing the race from a doorsill. "Great Scott!" exclaimed the spectactor, "was that a real thief? I thought you and he were employed by a moving-picture company."—Birmingham Age-Herald.

Ubiquitous. "Captain, is there much danger?" "Not a particle. A moving-picture outfit will soon be along and rescue us after they have taken a few films."—Louisville Courier-Journal.

Circumstantial Evidence. "What makes you suspect that they are engaged?"

"They have stopped occupying a box at the opera and are attending the picture shows instead."—Houston Post.

A Corrected Impression. The bread line was growing longer.

"They tell me," said the stranger to the special policeman, "that there are a lot of actors in the crowd over there."

"That's all a mistake," replied the officer. "A good many of those people are connected with the stage, but only three of them can act."—Cleveland Plain Dealer.

Labor Lost. "Three months," said the Judge.

"Your Honor," bawled the lawyer, "can't you mitigate the severity of that sentence? Would you send a beautiful actress to jail for three months?"

"Three months is very light for shooting a man."

"But, Judge, you don't understand. In three months the case will have been forgotten and then my client will be a frost in vaudeville."—Kansas City Journal.

A Serious Affair. "Faith," said the policeman, examining the broken window, "this is more sayrious thin Oi thought it was! It's broke on both soides."—Christian Register.

A Medical Wonder. In an action brought against a county in Iowa for services rendered by a physician to patients who were quarantined on account of diphtheria, the plaintiff's attorney, in his opening statement, is said to have uttered the following oratorical gem: "The evidence will show that this doctor treated these people that had the diphtheria with anti-intoxicants, and that after they recovered he went down and disaffected the whole premises."

Should Ask Laura Jean Libbey. A young man called upon a Georgia attorney recently, and, after stating that he "wanted some advice," began to read a letter he had received from a young lady. Thinking that he would soon come to the point, the lawyer permitted him to read to the "Good-by, from your devoted sweetheart," conclusion, before asking: "What can I do for you?"

"I want to know, Colonel," said the youth seriously, "if this girl really loves me, or if she is just kidding."

"Marry her and see," snapped the lawyer, who did not propose to express an opinion on a question so purely academic.

Longevity. A showman who desired to exhibit an Egyptian mummy applied to the local judge for a license, stating that at great trouble and expense, to say nothing of danger, he had been fortunate enough to procure the greatest curiosity ever seen in the United States.

"What is it?" asked the judge.

"An Egyptian mummy, may it please the court, more than three thousand years old," said the showman.

"Three thousand years old!" exclaimed the judge, jumping to his feet, "and is the critter alive?"

An Expert Dispenser. Macready wrote an illegible hand, especially when writing orders of admission to the theater. One day a Mr. Brougham obtained one of these from him for a friend. On seeing it, the latter observed that if he had not known what it purported to be, he would never have suspected what it was. "It looks more like a prescription than anything else," he added.

"So it does," said Mr. Brougham, "let us go and have it made up."

Entering the nearest drug store the paper was handed to the clerk, who gave it a careless glance, and proceeded to get a phial ready. With another look at the paper, down came a tincture bottle from which the phial was half filled. Then there was a pause. The apothecary was evidently puzzled as to the nature of the next ingredient. He rang for his principal, an elderly and severe looking individual, who presently emerged from an inner room. The two whispered together for an instant, when the old dispenser, with an expression of pity for the ignorance of his assistant, boldly filled the phial with some dark fluid, and coolly corked and labelled it. Then handing it to his customer he said, with a bland smile: "A cough mixture, and a very good one. Fifty cents, if you please."

An Eminently Practical Plan. "Your only hope," said the lawyer, "is to simulate insanity."

"But I don't know how," replied the prisoner. "I haven't the faintest idea of what I ought to say."

"Well, I'll get one of these men who write choruses for popular songs to fix up something for you."—Washington Star.

Elocution at Three Per. It was the duty of a supernumerary in a play in which Mr. Forrest appeared, to say simply: "The enemy is upon us," which he uttered at rehearsal in a poor whining way.

"Can't you say better than that?" shouted Forrest. "Repeat it as I do," and he gave the words with all the force and richness of his magnificent voice.

"If I could say it like that," replied the man, "I wouldn't be working for $3 a week."

"Is that all you get?"

"Yes."

"Well, then, say it as you please."

The Place to Anchor. One of the comedians of a Boston company went out with a fishing party, and soon began to suffer from thirst and evident failure with the hook. Finally one of the crowd took pity on the sufferer and fastened a bottle of beer to his fishing line while he was on a voyage of exploration. When the actor returned he found his line rather heavy, and started to haul in what he thought was the biggest fish of the day. Gleeful over his changed luck, he shouted to the captain: "Hey, captain, this is the place. Anchor right here; we're sailing over a brewery!"

Fell Among Thieves. Foote, the comedian, lived at a time when pickpockets did a thriving business in gentlemen's lace handkerchiefs. Having been taken one day into White's Club by a friend, who wanted to write a note, Foote found himself standing in a room among strangers. Lord Carmarthen, wishing to put him at his ease, went to speak to him, but, himself feeling rather shy, merely said: "Mr. Foote, your handkerchief is hanging out of your pocket." Whereupon Foote, looking around suspiciously and hurriedly thrusting the handkerchief back into his pocket, replied: "Thank you, my lord; thank you. You know the company better than I do."—Argonaut.